Supreme Court, U.S.
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No.

IN THE

SUPREME COURT OF THE UNITED STATES

October 1998 Term

Raymond B. Sherwood

Petitioner,

v.

Marilyn Hall Patel

Respondent,

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

APPENDEX II

Raymond B. Sherwood
1612 Merian Drive
Pleasant Hill, California 94523
(925) 827-2604
IN PROPRIA PERSONA

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(925) 827-2604
IN PROPRIA PERSONA

Raymond Bailey, Sherwood, SUI JURIS
1612 MERIAN DR.
Pleasant Hill, Calif. 94523
(510) 827-2604 IN PROPRIA PERSONA

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF CALIFORNIA

Raymond Bailey, Sherwood
a proper and necessary
Party
Plaintiff,

Marilyn Hall Patel in
her private person
Defendant.
_____/

File Number: C-97-2796 CW

COMPLAINT AGAINST
MARILYN HALL PATEL FOR
ABUSE OF LEGAL PROCESS,
RULING WITH WANT OF
JURISDICTION, FOR
VIOLATION OF
CONSTITUTIONAL DUE PROCESS
OF LAW.

DEMAND FOR JURY TRIAL
(Federal R. Civ. P, Rule 38)
(L.R. 3-6)
Demand for Article III court and Article III Judge

NOTICE

PLEASE BE AWARE that Plaintiff is not an attorney and is appearing propria persona (without counsel) as the court knows, and the court may not hold Plaintiff to the same standards as it-. would an attorney.

The Supreme Court in Jenkins v. McKeithen, 395 USC 411, that pro se pleadings are not to be held to the same high standards of perfection as lawyers. U.S. Court of Appeals 6th Circuit in Pickett v. Cox-456 F. 2d; P.2d 240: and Third Circuit ruled in Picking V. Penna Railroad, 151 F 2d 240 PRO SE

PLEADINGS ARE TO BE CONSIDERED WITHOUT REGARD TO TECHNICALITY.

DISREGARD OF ERROR or defect not affecting substantial right. The Court shall, in every stage of an action, disregard any error or defect in the pleading proceedings which does not affect the substantial rights of the adverse party. *(1972) 404 U.S. 519. 92 S. Ct. 594. 20 L. Ed 2d 652.*

PRELIMINARY STATEMENT

1. This action is against Marilyn Hall Patel, as an individual, for improper action outside the scope of her authority as a Federal Judge in violating Plaintiff's rights by malicious abuse of legal process in ordering an appearance for an unlawful administrative summons without personal or subject matter jurisdiction. Such action taken under color of official title violates the constitutional rights guaranteed to plaintiff under Article III, Section 2, and the Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States of America.

II
JURISDICTION

2. Original jurisdiction of all civil actions with a federal question or arising under the Constitution or laws of the United States is conferred on this court by 28 USC Sec. 1331 and\cr 1343(a)(3) and (4).

3. Original jurisdiction of a civil action under any act of Congress

providing for internal revenue is conferred on this Court by 28 USC Sec. 1340.

4.. Jurisdiction over the civil action for deprivation of rights is conferred on this court by 28 USC Sec. 1343 (a)(1).

5. Should any particular constitutional provision, law or statute not apply, Plaintiffs still sues the Defendant under the remaining applicable provisions and laws.

III
VENUE

6. The acts described herein transpired within the State of California, and this judicial district of California and involve federal law questions. Plaintiff is a citizen and resident of Contra Costa County in the State of California. Defendant is a citizen, resident or entity of the state in this judicial district of California, and therefore, pursuant to 28 USC Sec.1391(b) (e) (2), venue is properly set herein.

IV
PARTIES

7. Plaintiff Raymond Bailey, Sherwood is now, and at all times mentioned herein, a Citizen of the united States of America residing at 1612 Meriaa Dr., Pleasant Hill, California

8. Defendant Marilyn Hall Patel is an acting Federal Judge of the Ninth District court of the United States of America in San Francisco, California.

During all relevant times, Marilyn Hall Patel did not believe or could not have believed that her conduct was lawful, in light of clearly established law and the information she possessed.

STATEMENT OF FACTS

9. On July 31, 1996 Defendant Marilyn Hall Patel, acting in the capacity of a Federal Judge, issued a Supplemental Order supporting an Order to Show Cause, Re Enforcement of Internal Revenue Service Summonses, dated 23 May 1996 (Exhibit A); and Order Enforcing Summonses, dated 29 July 1996 (Exhibit B). All the above were issued in want of personal and subject matter jurisdiction to force Raymond Sherwood properly known as Raymond Bailey, Sherwood, co appear before Revenue Officer Francesca Aguilera and disclose privileged personal information against his will and against his stated written objection to the court.

The transcript (Exhibit C) shows that during the hearing on July 26, 1996 defendant acted with bias and prejudice against plaintiff, by acting as an attorney from the bench in not allowing opposing Counsel Denier to proceed; and made light of the Newt Gingrich, Tom Foley and Tip O'Neil declarations on the Title Pages of the Codes that affirm the "prima facie" status of the United States Codes. (Page 6 lines 2-20 of the tran5cript).. Plaintiff challenged the jurisdiction of the court for the subject matter and asked defendant Marilyn Hall

Patel: "Is there a complaint that has been filed in this matter", and defendant replied: "there is no complaint and there need not be in this kind of a - proceeding.11 (Page 3 line 14-15 Transcript) Plaintiff alleges that no subject matter jurisdiction exists against private Citizens without a complaint.

VI

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Violation of The Constitution under Color of Office against the Defendant)

11. Defendant Marilyn Hall Patel, acted in an individual capacity under color of office, outside the scope of her employment and authority as a Federal Judge, issued a Supplemental Order (Exhibit A) requiring an appearance for an administrative summons in want of personal and subject matter jurisdiction.

> Disclosures to Internal Revenue Service agent, revenue cc special, must be entirely voluntary and must not be induced by coercion, fraud or misrepresentation. *Cohen v. U.S., C.A.Mo. 1968, 405 F.2d 34, certiorari denied 89 S.Cc. 1274, 294 U.S. 943, .'L'2 L.Ed.2d 479.*

12. The allegations set forth in paragraphs 1 through 11 above are hereby incorporated by reference as if fully re-alleged herein.

13. The wrongful actions of defendant, as an individual, were arbitrary, capricious, in bad faith, not appropriately related to legitimate governmental ends, beyond the authority of defendant and were so unfounded and outrageous

as to shock the conscience or otherwise violate the norms explicit in the concepts of ordered liberty. These wrongful acts are egregious and were, taken with intentional or reckless disregard for the facts and circumstances that were known, or should have been well known, to defendant. Article VI, Section 3 mandates that all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation to support the Constitution. The defendant is thus individually liable for her violations of plaintiff's constitutional rights.

14. The deprivation of plaintiffs' constitutional rights by the individual defendant sued herein violated the rights guaranteed to the plaintiff under the First, Fourth, and Fifth Amendments to the United States Constitution. Specifically, defendant denied the plaintiff his right to equal protection under the law; denied the plaintiff his right to substantive and procedural due process; denied the plaintiff his right to be free from unlawful searches and seizures and the right to be secure in his business and home; denied plaintiff his right to confront his accuser; denied plaintiff his right to petition the government for redress of grievances; and deprived plaintiff his right of privacy and to be free from government interference; and deprive plaintiff of his civil rights.

15. As a direct and proximate result of defendant's unconstitutional actions, plaintiff has suffered severe emotional distress and has been injured in

his business, personally and has lost good will and his good reputation and standing in the community, lost profits and business opportunities, incurred extensive unnecessary legal search and costs and has otherwise suffered at the hands of defendant.

16. Accordingly, judgment should be rendered against the defendant for the violations of plaintiff'5 constitutional rights in an amount of $1 million.

17. The defendant committed the acts alleged herein maliciously, fraudulently and oppressively with the wrongful intention of injuring plaintiff by the misuse of her vast power of office as a federal district court judge. Plaintiff is thus entitled to recover punitive damages from the defendant.

SECOND CLAIM FOR RELIEF
(Lack of subject matter and personal jurisdiction against defendant)

18. The allegations set forth in paragraphs 1 through 18 above are hereby incorporated by reference as if fully re-alleged herein.

19. Defendant relied upon the information in the Verified Petition (Exhibit D) to presume jurisdiction over plaintiff and force plaintiff, Raymond Bailey, Sherwood, to appear before Revenue Officer Francesca Aguilera and disclose privileged personal information against his will, and was pursued to deprive plaintiff of his constitutional rights. These intentional, unconstitutional actions of the defendant have deprived the plaintiff of the civil

rights and equal protection and privileges and immunities under due process of law and are depriving plaintiff of other rights generated by the Constitution and available to any citizen of the United States.

20. As a direct and proximate result of defendant's unconstitutional actions, plaintiff has suffered severe emotional distress and has been injured in his business, personally and has lost good will and his good reputation and standing in the community, lost profits and business opportunities, incurred extensive unnecessary legal search and costs and has otherwise suffered at the hands of defendant.

21. Accordingly, judgment should be rendered against the defendant for the violations of plaintiff's constitutional rights in an amount of $1 million.

22. The defendant committed the acts alleged herein maliciously, fraudulently and oppressively with the wrongful intention of injuring plaintiff by the misuse of her vast power of office as a federal district court judge. Plaintiff is thus entitled to recover punitive damages from the defendant.

23. The VERIFIED PETITION TO ENFORCE INTERNAL REVENUE SERVICE SUMMONSES (Exhibit D) stated at paragraph 1 (line 19-22 page 1) that: This proceeding is brought and this court has jurisdiction hereof under Sections 7402(b) and 7604(a) of the Internal Revenue Code (26 U.S.C. §§ 7402 and 7604).

A-14 cont.

NO "APPROPRIATE PROCESS" OR "INSTANCE"

FROM THE UNITED STATES

24. Defendant claimed jurisdiction under S 7402(b), but failed to acknowledge the appropriate process" requirement, which is specified in Sec. 7402(a) as being "at the instance of the United States"; and defendant claimed jurisdiction without authorization from the Secretary of the Treasury, as specified in Sec. 7401, for authority to commence "civil action., Jurisdiction over the subject matter means the court has been given only certain types of cases which it may hear, and compliance with Sec. 7401 is the "INSTANCE" required prior to implementing Sec. 7402(a) .

25. There is no tangible evidence of an 'INSTANCE" from the United States for jurisdiction under 7402(a) by a complaint or written record of request pursuant to 7401 and the supporting reference of 26 CFR S 301-7401-1: U.S. Attorneys' Manual Title 6 Tax Division 6-3-111 Origin and Authorization: and Legal Reference Guide for Revenue Officers at 422, Authorization.

26. UNITED STATES ATTORNEYS' MANUAL TITLE 6 - TAX DIVISION, 6-3.111 Origin and Authorization states: Actions to collect taxes on behalf of the government originate by a request and authorization from a delegate of the Secretary of the Treasury, and are brought at the direction of the Attorney General, pursuant to Section 7401. The authority of the Secretary of the

Treasury to authorize and request such suits has been delegated to the Chief Counsel of the Internal Revenue Service. The Chief Counsel requests the commencement of a collection action, whether it be to reduce the assessment to Judgment or to foreclose the tax lien cn specific property, by a letter addressed to the Assistant Attorney General in charge of the Tax Division. These requests are routed to the chief of the appropriate Civil Trial Section who assigns them to individual attorneys for handling. An attorney in the appropriate Civil Trial Section drafts the compliant and then forwards the pleading, with a detailed letter setting out a statement of the facts and citing the pertinent authorities, to the U.S. Attorney. The U.S. Attorney should promptly forward advice as to the date the compliant was filed. (The record and the transcript [Exhibit C] will show that no complaint was filed)

27. "It is a universal rule * * * that a party who invokes the jurisdiction of the federal court must allege all facts necessary to give the court jurisdiction of the subject matter." *Stewart v. U.S., C.A. 7th, 199 F.2d 517, 520 (Major, C.J*

28. Jurisdiction involves two simple concepts, neither of which may be violated. Before the court can stand in judgment of a person, it must first prove it has jurisdiction over the person and the subject matter. Jurisdiction over the person means the person is included within the geographic boundaries of the court and that a charge (complaint) was properly served against said

defendant. The record shows that no complaint was filed. When there is no complaint there is no subject matter or personal jurisdiction over the private person and affairs of the plaintiff.

29. Defendant's statement claiming jurisdiction under "administrative process" was misleading and erroneous. It takes an Act of Congress (a statute) to actually confer the jurisdiction on a district court, and the presence of subject matter jurisdiction, usually with a citation of the jurisdiction conferring statute, must be demonstrated in every case.

> "Where jurisdiction is challenged it must be proven;" *Ha*gans v. *Lavine 415 U.S. 533.*

30. Plaintiff challenged the court's jurisdiction, by stating that if there was a jurisdiction in this action there has to be a complaint. (Page 4 line 13 through 20 of the transcript [Exhibit C] The defendant erred by disregarding the necessity for "civil action" and dismissed this requirement by stating there were other types of actions as there are with these types of proceedings. *Black's Law Dictionary* defines Civil action as: action brought to enforce, redress, or protect private rights. Defendant erred in failing to recognize that plaintiff is a private Citizen with private rights who is guaranteed civil action by due process.

> There is but one form of action, which has no name, so that action cannot be defeated here as it could at common law because not properly named. *Benzler v. Van Fleet (1915) 28 CA 389, 152 P 736.*

> "Jurisdiction is essential to give validity to the determination of

> administrative agencies and where jurisdictional requirements are not satisfied, the action of the agency is a nullity... *11 City Street Improv. Co. v. Pearson, 181 C 640, 185 P. 962; O'Neill* v. *Dept. of Professional & Vocational Standards 7 CA 2d 393, 46 P2d -734.*
>
> "The law requires PROOF OF JURISDICTION to appear an the Record of the administrative agency and all administrative proceedings." *Hagans v. Lavine, 415 U.S. 533.* (Emphasis added)

31. Jurisdiction over the subject matter means the court has been given only certain types of cases which it may hear, and compliance with Sec. 7401 is the "INSTANCE" required prior to implementing Sec. 7402(a).

32. Since there is no complaint there is no subject matter . or personal jurisdiction over the private person and affairs of the plaintiff, therefore, the defendant ruled and ordered in want of jurisdiction.

A COMPLAINT IS REQUIRED FOR CIVIL ACTION

33. Rule 3 Fed. Rules of Civil Procedure Commencement of Action.- A civil action is commenced by filing a complaint with the court.

> "Internal Revenue Code provision that civil action may not be commenced unless Secretary of Treasury or his delegate authorizes or sanctions it and the Attorney General or his delegate directs that it be commenced, is jurisdiccional." "This Court holds that26 U.S.C. S 7401 requirements constitute facts essential to jurisdiction. The failure to prove jurisdictional facts when specifically denied is fatal to the maintenance of this action. This Court erred in hearing the case on the merits and now determines such hearing was a nullity and not amenable to effective order or judgment, except the order now made that this Court does not have jurisdiction over the subject matter." *United States v. EmesL- Sims, 355 F. Supp. 513 (1573).*

SEPARATION OF POWERS PREVENTS IRS COLLECTION

OR SUMMONS ACTION

34. The Internal Revenue Service claims to be an agency of the Department of The Treasury, which is the Executive branch, and the separation of powers prevents jurisdiction over the private person of the plaintiff without a "civil action" by Sec. 7401. The Internal Revenue Service has no claim without a civil action under Sec. 7401, therefore, the defendant could have no jurisdiction over the plaintiff's private person and property. There is no other purpose for an IRS summons except to gather information for the collection of tax, and the Code and United States Attorney's Manual are clear regarding the requirements for Sec. 7401 civil action for collection.

35. Certificate of Service signed by the person serving SHALL be evidence of the facts it states on application for enforcement of the summons, and SHALL be served by the Secretary, by an attested copy. Contrary to Revenue Officer Aide Dorothy Mays, the service of the Summons did not contain an attestation, certification, oath or other statement of the validity of the correctness of the summons, as certified on the "service" by Dorothy Mays; and was issued under fraudulent pretense, without proper administrative or legal civil procedure. The judicial device for enforcing the administrative summons is provided by IRC 7402(b) and 7604, which only applies to government

employees and not private citizens!

.36 The appellation of "Taxpayer" is an Internal Revenue Service definition found at Section 7701(14) and does not apply to "private citizens" who are not liable under the "prima facie" law of title or the Secretary of the Treasury and his administrative authority.

> "The reasonable construction of the taxing statutes does not include vesting any tax official with absolute power of assessment against individuals not specified in the statutes as persons liable for the tax without an opportunity for JUDICIAL REVIEW of this status BEFORE the appellation of "TAXPAYER" is bestowed upon them and their property seized."
> *Botta v. Scanlon, 314 F. 2d 396 (2d Cir. 1961)*

37. The Summons was blatantly flawed by the fact that IRC 7604(b) Enforcement of Summons applies *ONLY* to IRC sections 6420(e)(2), 6421-(g)(2), 6427(i)(2) and 7602, which is not relevant or material to this instant action. These cited sections are: §6420 Gasoline used on farms; §6421 Gasoline used for certain non-highway purposes; and §6427 Fuels not used for taxable purposes! In each of these sections the alleged laws for the examination of books and witnesses are *ONLY* applicable to these particular cited sections as they relate to retail excise taxes and imposition of tax on petroleum products; and it is *ONLY for* the purpose of ascertaining the correctness of any claim under these cited sections that the Secretary SHALL have the authority granted by paragraphs (1), (2)" and (3) of section 7602. The

implementing regulations listed in the Parallel Table of Authorities and Rules (Exhibit E) for Section 7602 are shown as CFR 27 Parts 170, 296 that relate specifically to Alcohol, Tobacco Products and Firearms. There are no implementing regulations listed for the remaining sections 6420. 6421, and 6427. One agency may not use anothers regulations as clearly stated in:1 CFR Sec. 21.21 General requirements: References.

(c) Each agency shall publish its own regulations in fulltext. Cross-references to the regulations of another of another agency may not be used as substitute for Publication in full text, unless the Office of the Federal Register finds that the regulation meets any of the following exceptions:

(1) The reference is required by court order, statute, Executive order or reorganization plan.

(2) The reference is to regulations promulgated by an agency with the exclusive legal authority to regulate in a subject matter area, but the referencing agency needs to apply those **regulations in its own programs.** (Emphasis added)

NO LEGISLATIVE JURISDICTION

38. There is no legislative jurisdiction for any claimed orders pursuant to Art. 1, Sec. 8, Cl. 17 of the united States Constitution as supported by case law in *United States v. Lopaz No. 93-1260, 115 S. Ct. 1624, 121 L. Ed. 2d 626;*

United States v. DeWitt, 76 US 41 9 Wall 4, 19 L. Ed. 593 (1870); and Case No. 94-CR-140 United States v. George Lyman Wi7son, et al. United States District-Court Eastern District Of Wisconsin.

NO CONSTITUTIONAL JURISDICTION

39. There is no constitutional jurisdiction for any collection action against private Citizens by the Internal Revenue Service, when constitutional jurisdiction is limited to law or equity by Article 3 Section 2, and unless a Private Citizen has specifically waived constitutional rights by some contract that compels performance, and it was made in a willing and definitive manner, there are no legal statutes enacted by Congress to provide jurisdiction for collection action by the IRS. Title 26 USC is merely prima facie evidence of law with no supporting statutes at large that are required to be published in the Federal Register pursuant to 44 USC § 1500 et seq. to provide authority to affect the general public.

EXCLUSIVE JURISDICTION

> "The laws of Congress in respect to those matters [outside of Constitutionally delegated powers] do not extend into the territorial limits of the states, but have force ONLY in the District of Columbia, and other places that are within the exclusive jurisdiction of the national government."*Caha v. U. S. , 1 52 U. S. 21 1*

40. The *Caha* court coincides with the statutory law in title 4 U.S.C. S 72. *Public offices; at seat of Government,* which states: All offices attached to the seat of government shall be exercised in the District of Columbia,

and not elsewhere, except as otherwise expressly provided by law.

> "Constitutional restrictions and limitations were NOT applicable to the area of lands, enclaves, territories and possessions over which Congress had exclusive legislative authority."
> *Downes v. Bidwell, 182 U.S. 244*

> *New Orleans v. United States, 35 U.S. (10 Pet., at 737) 662 (1836),* the Supreme Court stated: "Special provision is made in the Constitution for the cession of jurisdiction from the states over places where the federal government shall establish forts or other military works. And it is only in these places, or in territories of the United States, where it can exercise a general jurisdiction.!'

> "It is a well established principle of law that all federal legislation applies only within the territorial jurisdiction of the United States unless a contrary intent appears." *Foley Brothers, Inc., v. Filardo, 336 U.S. 281 (1943)*

41. Origin and Authorization at 6-3.111 of the United States Attorneys' Manual Title 6 -Tax Division states that actions to collect taxes on behalf of the government originate by a request and authorization from a delegate of the Secretary of the Treasury, with reference to Section 7401. The request is by a letter addressed to the Assistant Attorney General who then routes them to attorneys' in the appropriate trial section who drafts the complaint -They are then forwarded with a detailed letter setting out the facts and citing the authorities and noting the date the complaint was filed.

THIRD CLAIM FOR RELIEF
(Abuse of legal process against the defendant)

42. The allegations set forth in paragraphs 1 through 40 above are hereby

incorporated bv reference as if fully re-alleged herein.

43. Defendant Marilyn Hall Patel committed malicious abuse of legal process when she claimed authority under 26 U.S.C. §§ 7402 and 7604 and ordered plaintiff to appear and disclose personal and private information to Revenue Officer Francesca Aguilera in violation of his Rights under the Fourth and Fifth Amendment to the United States Constitution, which affords a privacy right against unreasonable searches and 5eizures. Title 26 U.S.C. is merely prima facie law, as clearly cited in 1 U.S.C.A. Sec..204(a) et seq. and it has never been enacted into Positive law. (Exhibit F)

44. As a direct and proximate result of defendant's unconstitutional actions, plaintiff has suffered severe emotional distress and has been injured in his business, personally and has lost good will and his good reputation and standing in the community, lost profits and business opportunities, incurred extensive unnecessary legal search and costs and has otherwise suffered at the hands of defendant.

45. Accordingly, judgment should be rendered against the defendant for the violations of plaintiff's constitutional rights in an amount of $1 million.

46. The defendant committed the acts alleged herein maliciously, fraudulently and oppressively with the wrongful intention of injuring plaintiff by the misuse of her vast power of office as a federal district court judge. Plaintiff is

thus entitled to recover punitive damages from the defendant.

> Sec. 204 Codes and Supplements as evidence of the Laws of United States and District of Columbia: citation of Codes and Supplements (a) United States Code.–The matter set forth in the edition of the Code of Laws of the United States current at any time shall, together with the then current supplement, if any, establish prima facie the laws of the United States, general and permanent in their nature, in force on the day preceding the commencement of the session following the last session the legislation of which is included: *Provided, however,* That whenever titles of such Code shall have been enacted into positive law the text thereof shall be legal evidence of the laws therein contained, in all the courts of the United States, the several States, and the Territories and insular possessions of the United States.

47. The Internal Revenue Code (.16 USC) is clearly omitted from the list of the 22 titles enumerated within Title 1 that were enacted into positive law, because title 26, along with 25 other titles, do not meet the constitutional requirements for enactment.

> The United States Code is only a prima facie statement of the statute law, and statutes collected in it do not change their meaning nor acquire any new force by their inclusion and if construction is necessary, recourse must be had to the original statutes themselves. *Murrell v. W. U. Tel. Co., C.C.A. Fla.1947, 160 F.2d 787.*

> If construction of section of United States Code which has not been enacted into positive law is necessary, recourse must be had to original statutes themselves. *U.S. v. Welden, Mass. 1964, 84 S. Ct. 1082, 377 U.S. 95, 12 L. Ed. 2d 152.*

48. Any claim that the *Internal Revenue Code,* Title .26 USC, is legal evidence of law -must first NULLIFY Title I USC, *General Provisions* which IS legal evidence of the permanent laws and is duly enacted into positive law by

the Congress of the United States pursuant to Article 1, Section 1, Clause 1, (SENTENCE 1) of the Constitution, which mandates that All legislative powers herein granted shall be vested in a Congress of the United States. Title 1 USC is a constitutional law and All courts are mandated by Article 6 Section 2 to obey the Constitution wherein the Constitution shall be the supreme law of the land; and the judges in every state shall be bound thereby; and Section 3 mandates that all executive and Judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution.

TITLE 26 U.S.C. IS ONLY ADMINISTRATIVE LAW

49. Title 26 USC Internal Revenue Code is administrative law that specifies it is exclusively to officers, employees, and elected officials of the United States, and RESTRICTIVELY, to private citizens only when and where applicable, under the due process provisions provided by Title 26 USC Chapter 76, *Judicial proceedings*.

50. Any arguments for powers, duties, rules, regulations, and authorization under the prima facie Title 26 U.S.C., *Internal Revenue Code* are a nullity against "private Citizens" because the claimed authority for Title 26 Sections 7801 and 7805, lies with the Secretary of the Treasury who is an un-elected political appointee of the President, with no authority or jurisdiction over the proper private person or property of Raymond Bailey, Sherwood

pursuant to the Constitution or a congressional act.

51. Careful reading of statutory law in 31 U.S.C. 9 301(a,b) confirms the Secretary of the Treasury is appointed by the President and "approved" only by the single legislative body of the Senate. tio legitimate authority resides in or emanates from an office which was not legitimately created and/or ordained either by state or national constitutions or by legislative enactment. See variously, *United States v. Germane, 99 U.S. 508 (1879), Norton v. Shelby County, 118 U.S. 425, 441, 6 .5.Cc. 1121 (1866),* etc., dating to *Pope v. Commissioner, 138 F.2d 1006, 1009 (6ch Cir. 1943);* where the state is concerned, the most recent corresponding decision was State *v. Pinckney, 276 N.W.2d 433, 436 (Iowa 1979).*

52. 31 U.S.C. S 301(a, b) also specifies that the Secretary is the head of an Executive Department and "is at the seat of government", that is limited to the Executive Department ONLY by the separation of powers of the Constitution under Article II, Section 1, and also LIMITED to "all that part of the territory of the United States included within the present limits of the District of Columbia... (See Title 4 U.S.C. S 71); and "All offices attached to the seat of government [IRS!] shall be exercised in the District of Columbia, and not elsewhere, except as otherwise expressly provided by law." (See 4 U.S.C. S 72); And that the definitions in Title 44 U.S.C. 5 1501 clearly confirm that:

"Federal agency" or "agency" means the President of the United States, or an executive department,... bureau, agency,...but not the legislative or Judicial branches of the Government:" (Emphasis added) (EXHIBIT G)

> 53. This fact is further supported by the court to wit: "Purpose of Interval Revenue Service's statement of procedural rules is to govern the internal affairs of the IRS and those rules do not have the force or effect of law. 5 U.S.C.A. §§ 701-706; Administrative Procedure Act does not provide an independent source for jurisdiction. 5 U.S.C.A. SS 701-706; Administrative Procedure Act only applies to a final agency decision where there is no other adequate remedy. 5 U.S.C.A. §§ 701-706.11 *Einhorn v. DeWitt, 618 F. 2d 347 (1980).*

54. As referenced above, the definition of "Employee" in Title 5 U.S.C. Sec 2105(a) for the purpose of this title (5 USC) means a specific officer or employee of the government and NOT a Private citizen of private entity.

55. The head of an Executive department (Secretary of theTreasury) has no authority "outside" of his "agency" pursuant to statutory law. Title 5 USC § *301. Department regulations,* mandates: "The head of an Executive department or military department may prescribe regulations for the government of his department, the conduct of its emr)lavees, the distribution and performance of its business, and the custody, use, and preservation of its records, Papers, and property. This section does not authorize withholding information from the public or limiting the availability of records to the public. (Emphasis added)

56. The power of the Department of the Treasury is limited by the

separation of powers of the Executive branch in Article II Section 1 of the Constitution; and Article VI, Section 3 mandates that all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution ...

> 16 Am Jur 2d 5 310. Distinction between judiciary and administrative agencies.
>
> What essentially distinguished a court from an administrative agency is that under our constitutional system of separation of the three branches of government, Courts are part of the judicial, whereas administrative agencies are part of the executive, branch of the government. Bradly v. Bloomfield, 85 NJL. 506, 89 A 1009 (distinguishing "court" a branch of the government vested with judicial power from ministerial agencies of every kind and character).

57. Title 5 USC § 101. *Executive departments* lists the Department of the Treasury.

58. Title 31 USC § 301. *Department of the Treasury,* states at (a) The Department of the Treasury is an executive department of the United States Government at the seat of the Government. (The ten square mile area known as Washington D.C. is designated as the "seat of Government")

59 . Title 5 U.S.C. S 302. *Delegation of authority.* states in (a)... the "agency" has the meaning given it by section 5721 of this title, which is: (1) (A) an Executive agency.

TITLE 26 5 7401 REQUIRES CIVIL ACTION WITH A COMPLAINT

60. The Internal Revenue Service claims to be an agency of the Department of The Treasury, however, the DEPARTMENT OF THE TREASURY does not list the Internal Revenue Service on its organizational list of seven agencies in Title 31 USC Chapter 3--SUBCHAPTER 1ORGANIZATION If the IRS claim was true, it would be in the Executive branch, and the separation of powers prevents jurisdiction over the private person of the plaintiff without a "civil action" by 7401. The Internal Revenue Service has no claim without a civil actition under Sec. 7401, therefore, the defendant could have no Jurisdiction over the plaintiff's private person and property.

61. Title 26 USC Internal Revenue Code is administrative law that specifies it is exclusively to officers, employees, and elected officials of the United States, and RESTRICTIVELY, to private citizens only when and where applicable, under the due process provisions provided by Title 26 USC Chapter 76, *Judicial proceedings*, at section 7401. This provides the transition between the separation of powers of the Executive and the Judicial branch provided in Article III, Section 1 wherein "The judicial power of the United States, shall be vested in one supreme court, and in such inferior courts as the Congress may, from time to time, ordain and establish." The Internal R6veaue Service has no claim without a civil action under i 7401, therefore, defendant could have no jurisdiction over the plaintiff, a private person.

A-14 cont.

"Being creatures of the legislature, administrative agencies have no general, inherent, or common-law powers, but only those powers conferred upon them by the legislature. ...the source of the powers of administrative agencies lies in statutes, and administrative agencies must find within statutes warrant for the exercise of any authority which they claim."
2 Am Jur 2d § 55.

62. Title 5 USC further mandates at §556(d): "Except as otherwise provided by statute the proponent of a rule or order has the burden of proof... A sanction may not be imposed or rule or order issued except on consideration of the whole record or those Parts thereof cited by a party and supported by and in accordance with the reliable, Probative, and substantial evidence... A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts."

63. NO statutory law exists without recourse to the United States Statutes at Large, which must be promulgated (published) in the Federal Register pursuant to 44 U.S.C. 1500 et seq. This is confirmed within the administrative regulations at 26 CFR 601.702 *Publication and public inspections* and 5 U.S.C. 552(a)(1) and I CFR Part 20.

1 CFR Sec. 5.2 Documents required to be filed for public inspection and published.

(c) Each document having general applicability and legal effect.

I CFR § 5.4 Publication not authorized.

(c)... Chapter 15 of title 44, United States Code, does not authorize or require the filing and publication of other papers from an agency.

Also supported by case law:

> The United States Code is only a prima facie statement of the statute law, and statutes collected in it do not change their meaning nor acquire any new force by their inclusion and if construction is necessary, recourse must be had to the original statutes themselves. *Murrell v. W. U. Tal. Co., C.C.A. Fla.1947, 160 F.2d 787.*
>
> The official source to find United States law is the Statutes at Large and the United States Code is only prima facie evidence of such laws. *Royer '.s, Inc. v. U. S. , Pa. 1 959, 265 F. 2d 615.*
>
> If construction of section of United States Code which has not been enacted into positive law is necessary, recourse must be had to original statutes themselves. *U.S. v. Welden, Mass. 1964, 84 .5.Cc. 1082, 377 U..5. 95, 12 L. Ed.2d 15–I.*

SUMMARY

There was no constitutional jurisdiction for defendant's action and no legislative, subject matter, personal, judicial, or administrative jurisdiction. Title 26 was never enacted into positive law and no statutes exist for construction of this claim (see Murrell v. W. U. Tel. Co., C.C.A. Fla.1947, 160 F.2d 787);. no implementing regulation was ever published in the Federal Register as required by IRS administrative regulations at 26 CFR 5 601.702(a),(2), (ii), and Parallel Tables of Authorities show that the implementing regulations are *NOT* from 26 CFR, Income tax, but from 27 CFR, Alcohol, Tobacco, and Firearms!

A-14 cont.

Defendant's claim of jurisdiction fails wherein she stated: This proceeding is brought and this court has jurisdiction hereof under Sections 7402(b) and 7604(a) of the Internal Revenue Code (26 U.S.C. SS 7402 and 7604). The claim fails for the six reasons stated below.

1. Title 26 U.S.C. is merely prima facie law, as confirmed in Title 1 U.S.C. § 204(a). It has never been enacted into positive law and has no authority over plaintiff's private person or private property.

2. There can be no jurisdiction or authority from Title 26 without recourse to the United States Statutes at Large, which must be promulgated in the Federal Register pursuant to Title 44 U.S.C. 1500 et seq. to have general effect, but no such statutes have ever been produced.

3. There is no administrative authority over "private Citizens" from Title 26, when the authority cited for this title at §§ 7801 and 7805 is from the Secretary of the Treasury who is an unelected political appointee.

4. There is no administrative authority from §7402 without an 'INSTANCE' from the United States for jurisdiction under A 7402(a) by a complaint or written record of request pursuant to Sec. 7401.

5. There is no administrative summons authorized under S 7402, when the judicial device for enforcing the administrative summons at IRC 7402(b) and 7604, applies only to government employees and not private

Citizens.

6. There are no implementing regulations for summons listed in the Parallel Table of Authorities and Rules (Exhibit E) when Section 7602 is shown as CFR 27 Parts 170, 296 that relate to Tobacco Products and Firearms-and specifically to Alcohol, Tobacco Products and Firearms-and no implementing regulations listed for the remaining sections 6420, 6421, and 6427.- One agency may not use another's regulations as clearly stated in:

1 CFR S 21.21 General requirements: References.

(c) Each agency 5hall publish its own regulations in full text . Cross-references to the regulation of another agency-may not be used as a substitute for publication...

PRAYER FOR RELIEF

WHEREFORE, on each Claim for Relief, plaintiff requests that judgment be entered in his favor against the defendant, awarding the relief sought of one million dollars, his cost of suit and expenses, including reasonable attorney's fees and such other and further relief to which he is justly entitled.

JURY DEMAND

Plaintiff hereby demands trial by jury.

DATED: July 30, 1997 signed RAYMOND B. SHERWOOD

In pro per

EXHIBIT A

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA and FRANCESCA AGUILERA, Revenue Officer, Internal Revenue Service,

Petitioners,

v.

RAYMOND B. SHERWOOD,

_____/

Respondent.

No. C-96-1828 MHP

SUPPLEMENTAL ORDER

Respondent Raymond Sherwood has been the subject of investigation by the Internal Revenue Service ("IRS") for potential tax liabilities for the years 1989-1991 and 1994. In connection with that investigation, Revenue Officer Francesca Aguilera issued a summons to Sherwood directing him to appear and produce documents and records relating to his assets and liabilities for those years. After Sherwood failed to appear, the United States and Aguilera petitioned this court to enforce the summons under 26 U.S.C. §§ 7402(b) & 7604(a). The court issued an order to show cause why respondent should not be compelled to appear and produce documents on May 23, 1996. The May 16 order allowed for the respondent to file a written response to the petition and for the government to reply. Sherwood

moved to dismiss the order to show cause and the United States opposed the motion. The court now considers those submissions.

Sherwood argues that the order to show cause was not authorized by the Federal Rules of Civil Procedure and that the court is without subject matter jurisdiction, personal jurisdiction, legislative jurisdiction, and Constitutional jurisdiction. Sherwood also responds to the petition on which the order to show cause was based.

Sherwood's arguments are patently absurd. For as long as citizens have been advancing inventive arguments for why the federal tax laws were never properly enacted or are not applicable to them, the federal courts have been defeating those claims. "For over 75 years, the Supreme Court and the lower federal courts have both implicitly and explicitly recognized the Sixteenth Amendment's authorization of a nonapportioned direct income tax on United States citizens residing in the United States and thus the validity of the federal income tax laws as applied to such citizens.., In re Becraft, 885 F.2d 547, 548 (9th Cir. 1989) (citations omitted).

Despite respondent's fanciful contentions to the contrary, Title 26 of the United States Code was indeed enacted into law and provides this court with subject matter jurisdiction over enforcement of a summons

under internal revenue laws. 26 U.S.C. §§ 7402(b) &: 7604(a). Moreover this court has personal jurisdiction over respondent by virtue of his residence in this district. Fed. R. Civ. P. 4(k)(1)(A); Omni Capital Int'l, Ltd. v. Rudolph Wolff & Co., Ltd., 484 U.S. 97 (1987).- Accordingly, all of respondent's jurisdictional arguments fail.

Finally, Sherwood argues that the court's order to show cause was not authorized by the Federal Rules of Civil Procedure. The order was authorized by Title 26 which gives a district court power to enforce a summons issued by the IRS upon a proper showing. The showing the government must make is slight. United States v. Powell, 379 U.S. 48, 58 (1994); United States v. Abrahams, 905 F.2d 1276, 1280 (9th Cir. 1990). Respondent then has a burden to show that the government is acting in bad faith or that enforcement would be improper. United States v. Dynavac, Inc., 6 F.3d **1407t** 1414 (9th Cir. 1993). While the government met its burden, Sherwood cannot meet his. His responses to the petition are almost entirely premised on the lack of jurisdiction reject above. To the extent that they merely protest the procedural propriety of the investigation and the summons, they are equally unpersuasive.

EXHIBIT A cont.

Accordingly, Sherwood.is HEREBY ORDERED to comply with the order to enforce summons filed by this court on July 30, 1996.

IT IS SO ORDERED.

Dated: July 31, 1996 signed Marilyn Hall Patel

United States District Judge

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA and FRANCESCA AGUILERA, Revenue Officer, Internal Revenue Service, Petitioners,	NO. C-96-1828-MHP
v.	ORDER ENFORCING SUMMONSES
RAYMOND B. SHERWOOD, Respondent.	

This case having come on for hearing on July 26, 1996, at 10:30 a.m., upon the return of an Order to Show Cause heretofore issued by this Court, and the Court having considered the record herein, including the Verified Petition To Enforce Internal Revenue Summonses, it is hereby

ORDERED that respondent RAYMOND B. SHERWOOD appear before petitioner FRANCESCA AGUILERA or any other designated agent, on or before September 9, 1996, at a time, place or places to be designated by said petitioner to said respondent, and then and there give such testimony and produce such items described in the subject internal

EXHIBIT B cont.

revenue summonses, true copies of which are attached hereto as Exhibit A and B it is further

ORDERED, pending compliance with the subject internal revenue summonses, that respondent Raymond B. Sherwood maintain and preserve all documents and records described in the subject internal revenue summonses which are in his possession or control and that respondent Raymond B. Sherwood refrain from destroying said documents and records, and from taking any other action which would remove said documents from his possession or control, or would in any other way prevent production of said documents and records pursuant to the summonses.

ORDERED that the Case Management/Status Conference set for August 16, 1996, at 9:30 a.m. be vacated to be reset, if necessary, at a later date.

ORDERED this *29th* day of *July*, 1996, at San Francisco, California.

signed Marilyn Hall Patel

UNITED STATES DISTRICT JUDGE

EXHIBIT B cont.

Summons

Income Tax Return

In the matter of Raymond B. Sherwood

1612 Merian Dr.

Pleasant Hill, CA 94523

Internal Revenue District of Sacramento Periods Individual Income Tax for the Calendar Years Ended Dec. 31, 1994. The Commissioner of Internal Revenue To Raymond B. Sherwood at 1612 Merian Dr., Pleasant Hill, CA 94523. You are hereby summoned and required to appear before Mrs. F. Aguilera an Internal Revenue Service (IRS) officer, to give testimony and to bring for examination the following information related to the collection of the tax liability of the person identified above for the periods shown:

All documents and records you possess or control regarding income you received for the years 1994. These records and documents include, but are not limited to: Forms W-2 (Wage and Tax Statement), Forms 1099 for interest and dividend income, employee earnings statements, and records of deposit with banks or other financial institutions. Also include all other books, records, documents, and receipts for income from, but not limited

EXHIBIT B cont.

to the following sources: wages, salaries, tips, fees, commissions, interest, rents, royalties, alimony, state, or local tax refunds, annuities, life insurance policies, endowment contracts, pensions, estates, trusts, discharge of indebtedness, distributive shares of partnership income, business income, gains from dealings in property, and any other compensation for services (including receipt of property other than money). Including all documents and records about any income you assigned to any other person or enity. IRS will use this information to prepare a federal income tax return for the following year(s) when you don't file a return. 1994. We have attached a blank return to guide you in producing the necessary documents and records. Business address and telephone number of Internal Revenue Service officer named above. 185 Lennon Lane, Ste 200, Walnut Creek, CA 94598. Place and time for appearance: At 185 Lennon Lane, Ste. 200, Walnut Creek, CA 94598 On the 21st day of February, 1996 at 9:00 A.M.

Issued under the authority of the Internal Revenue Code this 9th day of February , 1996. Signed F. Aguilera, Revenue Officer.

EXHIBIT B cont.

Summons

Collection Information Statement

In the matter of Raymond B. Sherwood

1612 Merian Dr.

Pleasant Hill, CA 94523

Internal Revenue District of Sacramento Periods Individual Income Tax for the Calendar Years Ended Dec. 31, 1989, Dec. 31. 1990, Dec. 31, 1991. The Commissioner of Internal Revenue To Raymond B. Sherwood at 1612 Merian Dr., Pleasant Hill, CA 94523. You are hereby summoned and required to appear before Mrs. F. Aguilera an Internal Revenue Service (IRS)officer, to give testimony and to bring for examination the following information related to the collection of the tax liability of the person identified above for the periods shown:

All documents and records you possess or control regarding assets, liabilities, or accounts held in the taxpayer's name or for the taxpayer's benefit which the taxpayer wholly or partially owns, or in which the taxpayer has a security interest. These records and documents include but are not limited to: all bank statements, checkbooks, canceled checks,

EXHIBIT B cont.

savings accounts passbooks, records or certificates of deposit for the periods shown:

All documents and records you possess or control regarding assets, liabilities, or accounts held in taxpayer's name or for the taxpayer's benefit which the taxpayer wholly or partially owns, or in which the taxpayer has a security interest. These records and documents include but are not limited to : all bank statements, checkbooks, canceled checks, savings account passbooks,, records, or certificates of deposit for the period From Jan 1, 1995 to Jan 15, 2006. Also include all current vehicle registration certificates, deeds or contracts regarding real property, stocks and bonds, accounts, notes, and judgments receivable, and all current life or health insurance policies.

IRS will use this information to prepare a Collection Information Statement. We have attached a blank statement to guide you in producing the necessary documents and records.

Place and time for appearance: At 185 Lennon Lane, Ste 200, Walnut Creek, CA 94598 On the 21st day of February, 1996 at 9:00 o'clock A.M.

Issued under authority of the Internal Revenue Code this 7th day of February 1996. Signed F. Aguilera Revenue Officer.

Exhibit C

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA
Plaintiff

No. C- 96-1828 (MHP)

v.

RAYMOND B. SHERWOOD
Respondent

_____/

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SAN FRANCISCO, CALIFORNIA
JULY 26, 1996

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MARILYN HALL PATEL

APPEARANCES:

UNITED STATES ATTORNEY'S OFFICE
TAX DIVISION
FEDERAL BUILDING, 450 GOLDEN GATE AVE.
SAN FRANCISCO, CALIF. 94102

BY: DAVID DENIER, ASSISTANT UNITED STATES ATTORNEY

REPORTED BY: KAY C. HILL, CSR, RMR
CSR #2368

EXHIBIT C cont

THE CLERK: CIVIL ACTION 96-1828, UNITED STATES VERSUS RAYMOND SHERWOOD FOR AN ORDER TO SHOW CAUSE.

COUNSEL, YOUR APPEARANCES, PLEASE.

MR. SHERWOOD: RAYMOND SHERWOOD RESPONDENT.

MR. DENIER: DAVE DENIER, UNITED STATES TAX DIVISION. GOOD MORNING, YOUR HONOR.

THE COURT: GOOD AFTERNOON.

MR. SHERWOOD, WHERE DID YOU GET THE IDEA THAT THE INTERNAL REVENUE CODE HAS NOT BEEN VALIDLY ADOPTED, THAT SOMEHOW THERE IS NO CONSTITUTIONAL JURISDICTION OVER YOU, OR OTHER KIND OF JURISDICTION OVER YOU, AND THAT YOU ARE NOT SUBJECT TO THE INTERNAL REVENUE CODE AND SO FORTH. WHERE DID YOU GET THOSE IDEAS FROM? WHAT MAKES YOU DIFFERENT FROM EVERY OTHER CITIZEN IN THIS COUNTRY, OR NOT EVEN CITIZEN, JUST CITIZENS, PERSONS WHO LIVE HERE AND WORK HERE AND ARE ALIENS, OR ONES WHO ARE NOT HERE LAWFULLY PLUS PAY TAXES?

MR. SHERWOOD : I MADE NO CLAIM OF BEING A RESIDENT ALIEN OR ANYTHING LIKE THAT, YOUR HONOR.

THE COURT: HOW DO YOU -- IF YOU ARE-A CITIZEN, HOW DO YOU AVOID PAYING TAXES, OR BEING ACCOUNTABLE FOR A

EXHIBIT C cont.

DETERMINATION AS TO WHAT TAX LIKBILITY YOU MAY HAVE, WHAT SETS YOU APART FROM ALL THOSE OTHER PEOPLE, ALL OF US WHO FILE INCOME TAX RETURNS AND HAVE TO PAY TAXES?

MR. SHERWOOD: THAT'S NOT MY POSITION, REALLY. BUT BEFORE WE GO – BEFORE I GO INTO THAT, I WOULD LIKE TOGET A COUPLE OF QUESTIONS ANSWERED FIRST, IF I MAY. **IS THERE A COMPLAINT THAT HAS BEEN FILED IN THIS MATTER?** (EMPHASIS MINE)

THE COURT: THERE IS AN ORDER TO SHOW CAUSE, AND THAT IS HOW THIS PROCEEDING, THIS TYPE OF A PROCEEDING IS COMMENCED, BECAUSE THE IRS HAS THE AUTHORITY TO C0MPEL YOU TO COME BEFORE IT. WHEN YOU DON'T APPEAR AS REQUIRED, THEN THEY ASK THE COURT FOR WHAT IS CALLED AN ORDER TO SHOW CAUSE WHY YOU SHOULD NOT BE COMPELLED TO APPEAR. AND THAT'S THE DOCUMENT WHICH THEN INITIATES THE COURT PROCEEDING.

MR. SHERWOOD: OKAY, SO **THERE IS NO COMPLAINT**FILED AT THE PRESENT TIME?

THE COURT: **THERE IS NO COMPLAINT** AND THERE NEED NOT BE IN THIS KIND OF A PROCEEDING. THERE IS A VERIFIED PETITION THAT *IS* IN ESSENCE LIKE A COMPLAINT AND THAT APPRISES YOU OF ALL THE

EXHIBIT C cont.

FACTS THAT SUPPORT THE REQUEST FOR THE ORDER TO SHOW CAUSE.

MR. SHERWOOD: WHICH BRINGS ME TO THE POINT, YOUR HONOR, WHY IS A STATUS CONFERENCE SCHEDULED FOR.-AUGUST 16TH IF **THERE IS NO COMPLAINT?**

THE COURT: STATUS CONFERENCE IS AUTOMATICALLY SET SO THAT IF, IN FACT – ESSENTIALLY IT IS SO WE DON'T LOSE CONTROL OF THE CASE. WE KNOW THERE IS A CASE THERE AND THE CASE HAS NOT BEEN COMPLIED WITH. FOR EXAI-IPLE, IN MOST CASES, ONCE THE ORDER TO SHOW CAUSE IS ISSUED, A PERSON GETS AHOLD OF THE U.S. ATTORNEY AND MAKES THE NECESSARY ARRANGEMENTS TO COMPLY WITH THE ORDER. SOMETIMES THAT DOESN'T HAPPEN, SOMETIMES A PERSON HASN'T BEEN SERVED, OR WHATEVER. WE HAVE A STATUS CONFERENCE, OR SOMETIMES THEY WILL COME IN, AND AFTER I HAVE ORDERED CERTAIN THINGS BE DONE, WE HAVE TO CHECK ON COMPLIANCE AND SO FORTH, AND THEY HAVE A STATUS CONFERENCE. IT HAS NOTHING DO WITH WHAT THE DOCUMENT IS THAT INITIATES THE ACTION, ALBEIT MOST CIVIL CASES DO COMMEIICE WITH THE FILING OF A COMPLAINT, BUT THESE ARE DIFFERENT TYPE OF ACTIONS PURSUANT TO THE INTERNAL REVENUE CODE.

EXHIBIT C cont.

MR. SHERWOOD: MY RESEARCH WENT TO IF THERE WAS A JURISDICTION IN THIS ACTION THERE HAS TO BE A COMPLAINT.

THE COURT: THAT'S BECAUSE YOU ARE LOOKING AT THE FEDERAL RULES OF CIVIL PROCEDURE, WHICH ARE GENERAL IN THEIR NATURE, AND GENERALLY APPLY TO CIVIL ACTIONS, BUT THERE ARE OTHER TYPES OF ACTIONS FOR WHICH THERE ARE STATUTORY, SPECIFIC STATUTORY PROVISIONS, AS THERE ARE WITH THESE TYPE OF PROCEEDINGS.

MR. SHERWOOD: SHOULD NOT THOSE BE ADDRESSED OR PUT FORWARD SO I KNOW HOW TO RESPOND TO THEM?

THE COURT: THIS IS WHAT THEY HAVE DONE, THEY HAVE GIVEN YOU – THE COURT HAS ISSUED AN ORDER TO SHOW CAUSE, IT IS BASED UPON THE VERIFIED PETITION SETTING FORTH THE FACTS AS TO WHAT WAS DONE OR WASN'T DONE, AND IS REQUIRED UNDER THE INTERNAL REVENUE CODE. AND IT TELLS YOU WHAT THEY ARE SEEKING. AND THAT IS VARIOUS ITEMS THEY ORIGINALLY SOUGHT BY THE AUTHORITY THEY HAD; NAMELY, BY THEIR OWN SUMMONS AND WHEN YOU DON'T COMPLY WITH THAT SUMMONS AND THEY HAVE TO COME INTO COURT

EXHIBIT C cont.

AND SEEK BY THIS PROCEDURE TO HAVE YOU COME BEFORE THE COURT AND EXPLAIN WHY YOU SHOULDN'T BE COMPELLED TO PROVIDE WHAT IS BEING SOUGHT, OR TO GET THE IMPETUS OF THE COURT TO THEN MAKE YOU REALIZE YOU HAVE TO RESPOND TO THIS, YOU CAN"T JUST IGNORE A SUMMONS BY THE INTERNAL REVENUE CODE.

MR. SHERWOOD: YOUR HONOR UNDERSTMIDS THAT I DID RESPOND TO THE SUMMONS OF THE INTERNAL REVENUE SERVICE?

THE COURT: YES, I SAW WHAT YOU SUBMITTED IN RESPONSE TO IT.

MR. SHERWOOD: A PETITION TO QUASH. BECAUSE THERE WAS NO COURT TO SEND THE PETITION TO QUASH TO, I HAD TO SEND IT TO WHOEVER SENT THE ORIGINAL SUMMONS.

THE COURT: WELL, IN OTHER WORDS, YOU DIDN'T RESPOND TO THE SUMMONS BY PROVIDING WHAT THEY WANTED AND WHAT THEY SAID THEY ARE ENTITLED TO, SO THEY HAVE NOW FILED THIS PETITION HERE TO GET YOU TO DO THAT.

MR. SHERWOOD: AND MY POINT IS, BECAUSE WE ARE HERE TODAY ON THIS SUMMONS IS EXACTLY WHERE THE LAW GOES TO.

THERE IS **NO LAW** THAT COMPELS ME TO ANSWER AN IRS SUMMONS, THAT I CAN FIND.IN FACT, IF WE GET INTO IT, BY THE NEWT GINGRICH, TOM FOLEY, TIP O'NEIL, SPEAKERS OF THE HOUSE, HEADING PAGE TO

EXHIBIT C cont.

THE HOUSE OF REPRESENTATIVES OF DOCUMENTS SAYS TITLE 26 HAS NEVER BEEN ENACTED INTO THE LAW WHY AM I COMPELLED TO ANSWER THAT IF IT HAS NOT BEEN ENACTED INTO LAW?

THE COURT: WHERE DID YOU EVER GET THAT IDEA FROM?

MR. SHERWOOD: WELL, I AM READING IT, IT IS IN MY EVIDENCE, AND I HAVE, IF YOUR HONOR PLEASES, MORE SUBSTANTIATING EVIDENCE TO THAT FACT.

THE COURT: WELL, THE COURTS HAVE DEALT WITH THIS SO MANY TIMES IT ISN'T FUNNY, INCLUDING THE SUPREME COURT.AND THE NOTION THAT THE INTERNAL REVENUE CODE WAS NEVER ADOPTED, WHY DON'T YOU ASK NEWT GINGRICH OR TOM FOLEY – WELL, YOU WON'T BE ABLE TO ASK TIP O'NEIL, SADLY, BUT IF THEY PAY TAXES, AND UNDER WHAT AUTHORITY DO THEY, ARE THEY JUST DOING IT VOLUNTARILY BECAUSE THEY LOVE THEIR COUNTRY AND NOT BECAUSE THEY ARE REQUIRED TO BY TITLE 26 OF THE REVENUE CODE?

MR. SHERWOOD: YOUR HONOR, I PAY TAXES. TITLE 26, BY THE EVIDENCE THAT I HAVE PRESENTED, HAS NOT BEEN ENACTED INTO LAW.

THEY MAY PERSUADE YOU, BUT THEY HAVE NEVER PERSUADED ANY COURT, AND THEY DON'T PERSUADE ME.

MR. SHERWOOD: MAY I GO TO THE SUMMONS ITSELF IN THE VERIFIED PETITION OF MRS. AGUILAR?

THE COURT; WHAT IN PARTICULAR ARE YOU REFERRING TO?

MR. SHERWOOD: WHAT I AM PARTICULARLY REFERRING TO IS IN HER VERIFIED PETITION, SHE SAYS SHE HAS NO RECORDS TO ESTABLISH A LIABILITY FOR ME TO RESPOND. IF SHE HAS NO RECORDS TO ESTABLISH A LIABILITY, WHAT BASIS DID SHE USE TO INITIATE COLLECTION ACTION IN SEPTEMBER OF 1995. NOW EITHER SHE HAD RECORDS OR SHE DOESN'T HAVE RECORDS. IF SHE HAS THE RECORDS, THEN SHE HAS LIED IN HER VERIFIED PETITION. AND IF SHE DOESN'T HAVE THE RECORDS, THEN SHE HAD NO BASIS FOR PUTTING COLLECTION ACTION ON ME IN SEPTEMBER OF 1995.

MR. DENIER: YOUR HONOR, IF I MAY ASSIST THE COURT, THERE WERE TWO SUMMONS, ONE WAS A COLLECTION SUMMONS WITH RESPECT TO COLLECTIONS ALREADY MADE FROM 1989 TO 1991. THE SECOND IS A SUMMONS FOR DOCUMENTS THAT WOULD HELP HER DETERMINE HIS 1984 TAX LIABILITY. SO MR. SHERWOOD IS A LITTLE CONFUSED HERE. THE COLLECTION ACTUALLY DOESN'T RELATE TO 1994 BECAUSE WE

DON'T HAVE AN ASSESSMENT THEN, WE HAVEN'T DETERMINED HIS LIABILITY FOR 1994.

THE COURT: WAS IT 1994?

MR. DENIER: 1994. IS THE SUMMONS SEEKING INFORMATION TO DETERMINE HIS LIABILITY FOR THAT YEAR. THERE HAVE ALREADY BEEN DETERMINATIONS AND ASSESSMENTS MADE WITH RESPECT TO THE EARLIER YEARS, AND FOR THOSE YEARS WE ARE SEEKING INFORMATION OF ASSETS AND LIABILITIES SO WE CAN DETERMINE HOW TO COLLECT THOSE LIABILITIES.

THE COURT: FOR WHAT YEARS HAS -- IN THE PAST HAS MR. SHERWOOD FILED INCOME TAX STATEMENTS?

MR. DENIER: I DON'T RAVE THAT INFORMATION BEFORE ME, BUT YOU CAN ASK MR. SHERWOOD THAT INFORMATION.

MR. SHERWOOD: I FILED ALL YEARS EXCEPT 1989, 19901 1991 AND 1994. ALL OTHER YEARS RAVE BEEN FILED. I THINK IF YOU LOOK AT WHAT SHE HAS PRESENTED IN HER VERIFIED PETITION, I SEE NO DIFFERENCE BETWEEN 1989, '90 AND '91 IN ONE PARAGRAPH, AND THEN GOING FOR 1994 IN THE OTHER PARAGRAPH.

THE COURT: WELL, THEY SUBMITTED -- YOU RECEIVED, I ASSUME, THE NOTICE OF LEVY ON WAGES AND SO FORTH, AND IT LISTS AT LEAST

WHAT THEY KNOW AS OF THAT TIME, BUT THEY LIST FOR 1989, 1990, 1991. NOW, YOU DIDN'T FILE RETURNS IN THOSE YEARS?

MR. SHERWOOD: NO, MA'AM, I DID NOT.

THE COURT: AND SO YOU ARE NOT BEING VERY HELPFUL WITH THEM IN TRYING TO DETERMINE WHAT TAXES YOU MAY BE LIABLE FOR IF YOU DON'T FILE A RETURN.

MR. SHERWOOD: BUT THEY INITIATED THE COLLECTION ACTION FOR 1989, 1990 AND 1991 WHEN THEY SAY THEY HAD NO RECORDS TO DO THIS.

THE COURT: WELL, THAT'S NOT TRUE. THERE ARE EXHIBITS THAT ARE APPENDED HERE THAT REFLECT PAYMENTS FOR -FROM BUFFALO AIRWAYS. WERE YOU EMPLOYED BY SOMETHING CALLED BUFFALO

MR. SHERWOOD: YES, MA'AM.

THE COURT: THAT IS AN AIRLINE?

MR. SHERWOOD: YES, MA'AM, KANSAS CITY, MISSOURI.

THE COURT: WHAT IS IT WITH PILOTS, OR AIRLINE EMPLOYEES, DO THEY HAVE SOME NOTION THAT -- SOMEBODY SENDS THEM LITERATURE AROUND THE AIRLINES AND TELLS THEM THEY DON'T HAVE TO PAY TAXES?

MR. SHERWOOD: I HAVE NEVER BEEN INVOLVED IN ANY OF THAT.

EXHIBIT C cont.

THE COURT: IT WOULDN'T BE THE FIRST TIME I HAVE HAD AIRLINE EMPLOYEES WHO DIDN'T THINK THEY NEEDED TO PAY TAXES.

MR. DENIER: MR. SHERWOOD IS CONFUSING THINGS. THE SUMMONS, WITH RESPECT TO '89, '90 AND '91 IS PURELY A COLLECTION SUMMONS. HOW THEY DETERMINED HIS TAX LIABILITY, THEY DETERMINED FOR WHATEVER INFORMATION THEY COULD GET FOR THOSE YEARS, BUT THAT IS SEPERATE AND DISTINCT FROM 1994. AND PROBABLY, TO FURTHER HELP HIM ALONG, SIMPLY BECAUSE WE MAY HAVE SOME INFORMATION TO DETERMINE LIABILITY DOESN'T MEAN WE ARE PROHIBITED FROM SUMMONING INFORMATION FROM HIM TO MORE ACCURATELY DETERMINE HIS CORRECT TAX LIABILITY. YOU MIGHT NOTICE IN THE SUMMONS WE ASKED FOR INFORMATION WHICH COULD ESTABLISH DEDUCTIONS. I MEAN, WE ARE IN A SITUATION WHEN A TAX PREPARER LIKE MR. SHERWOOD DOES NOT FILE A RETURN, OR REFUSES TO TRY AND RECONSTRUCT HIS TAX RETURN, WE MAY HAVE, IF HE IS A W-2 WAGE EARNER, WE MAY HAVE INFORMATION INDICATING SOME INCOME. WE MAY HAVE INFORMATION OF 1099S FROM BANKS INDICATING OTHER INCOME. WE HAVE PROBABLY NO INFORMATION, EXCEPT MAYBE A MORTGAGE, HE MIGHT HAVE INFORMATION FILED. I AM NOT SURE THEY HAVE ACCESS TO THAT TO DETERMINE HIS

DEDUCTIONS. SO ALL SHE IS TRYING TO DO IS HELP HIM GET AN ACCURATE DETERMINATION OF HIS TAX LIABILITY, AND WE ARE ENTITLED TO SEEK THAT INFORMATION. WE ARE NOT LIMITED TO WHAT LITTLE INFORMATION WE CAN FIND. WE ARE ENTITLED TO GO AHEAD AND TRY TO DETERMINE THE CORRECT TAX LIABILITY.

THE COURT: FOR -89, '90 AND '91, THEY HAVE ALREADY MADE THAT DETERMINATION BASED UPON WHAT WAS AVAILABLE TO THEM. THEY CANNOT DO THAT FOR 1994 BECAUSE THEY DON'T HAVE ANY INFORMATION. BUT YOU FILED A RETURN I N '93?

MR. SHERWOOD: YES, MA'AM, AND 1992. AND ON JULY THE 16TH, I RECEIVED A CORRECTION FROM MRS. AGUILAR TO A LEVY OR LIEN ON SOME PROPERTY THAT I HAVE, AND SHE INCLUDES 1992. SHE ISSUED TWO NOTICES OF LIEN FOR THE SAME YEARS IN QUESTION, AND THE FIGURES DON'T JIVE IN EITHER ONE OF THEM. ON ONE OF THEM SHE INCLUDED 1992, AND IT IS HARD FOR ME TO HAVE ANY CONFIDENCE SHE IS TRYING TO HELP ME IN DETERMINING THE TAX LIABILITY WHEN SHE KEEPS RUNNING AROUND AND ADDING OTHER THINGS TO IT.

THE COURT: HOW WAS SHE SUPPOSED TO DETERMINE IT AT ALL FOR 1994, OR ANY OF THESE OTHER YEARS, WHEN YOU DON'T FILE RETURNS?

EXHIBIT C cont.

DID YOU HAVE INCOME IN 1994?

MR. SHERWOOD: SOME, YES, MA-AM.

THE COURT: . WERE YOU EMPLOYED BY SOMEBODY ELSE OR SELF-EMPLOYED?

MR. SHERWOOD: PARTIALLY EMPLOYED. I WAS LAID OFF. I WORKED SOME, AND SOME I DIDN'T WORK.

THE COURT: WELL, YOU NEED TO FILE A RETURN. AND THEN YOU CAN LET THEM KNOW HOW MUCH YOU EARNED AND HOW MANY DEDUCTIONS. AND IT MAY BE YOU ARE ENTITLED TO A REFUND, BUT THAT DOESN'T HAPPEN IF YOU DON'T FILE A RETURN. I AM CURIOUS AS TO WHY YOU THINK YOU WERE EXEMPT IN '89, '90 AND '91 AND '94 BUT NOT IN '921 '93 AND MAYBE EARLIER YEARS.

MR. SHERWOOD: I DON'T WISH TO BORE THE COURT WITH THE PAST, BUT I WAS BEFORE THE JUDGE IN 1982-ISH. I DON'T KNOW WHETHER YOU REMEMBER OR NOT, BECAUSE OF A LOT OF STUFF WHERE THE IRS HAD PROMISED A REFUND OF AN OVERPAYMENT THAT THEY NEVER GAVE ME, THEY DENIED ME AND FORCED ME TO GO TO COURT TO GET THE MONEY. YOUR HONOR GRANTED MY COURT CASE TO GIVE ME THE MONEY, AND I NEVER RECEIVED THE MONEY. IT WAS APPLIED TO WHAT I THINK WAS AN ERRONEOUS 1988 CLAIM, BOGUS CLAIM BY THE IRS.

AND AT THAT TIME I FIGURED, RIGHT OR WRONG, THAT I WAS THE VICTIM OF ABUSE FOR CHALLENGING THEM AND THAT I WAS GOING TO STOP FOR FIVE YEARS. THAT WAS MY DECISION.

THE COURT: THEN YOU WOULD RATHER FIND YOURSELF IN A POSITION AT SOME POINT BEING CHARGED CRIMINALLY? THAT MAKES NO SENSE.. WELL, AT ANY RATE, I AM GOING TO ISSUE THE ORDER TO SHOW CAUSE, AND YOU ARE GOING TO BE COMPELLED WITHIN A CERTAIN PERIOD OF TIME TO TURN OVER THE DOCUMENTS AND RECORDS, AND SO FORTH, THAT ARE SOUGHT BY VIRTUE OF THE ORDER TO SHOW CAUSE. AND OTHERWISE RESPOND TO QUESTIONS. AND WHAT IS A REASONABLE PERIOD OF TIME AS FAR AS BOTH PARTIES ARE CONCERNED IN WHICH TO ACCOMPLISH THAT?

MR. DENIER: YOUR HONOR, I HAVE A PROPOSED ORDER WHICH ALLOWS MR. SHERWOOD TWO WEEKS, AND ASKS HIM TO APPEAR BY AUGUST 9TH. THE COURT COULD MODIFY THAT. WE THINK HE HAS HAD THE SUMMONS SINCE FEBRUARY, HE HAS HAD FIVE MONTHS TO ACCUMULATE WHATEVER DOCUMENTS OR INFORMATION HE NEEDS.

THE COURT: COULD YOU HAVE YOUR BOOKS AND RECORDS IN HERE IN TWO WEEKS?

EXHIBIT C cont.

MR. SHERWOOD: MAY I ASK A COUPLE OF QUESTIONS BEFORE I RESPOND TO THAT, PLEASE?

THE COURT: YES.

MR. SHERWOOD: DO I HAVE AN APPEAL RIGHT TO THIS DECISION THAT YOU ARE GRANTING THAT I HAVE TO SHOW CAUSE?

THE COURT: YES, YOU DO. BUT YOU MAY WANT TO TAKE A LOOK AT SOME OF THOSE APPELLATE DECISIONS, BECAUSE MORE THAN ONE PERSON – YOU CAN TELL ME HOW MANY – HAVE BEEN SANCTIONED BY THE COURT OF APPEALS; IN OTHER WORDS, IMPOSE MONETARY SANCTIONS PAYABLE TO THE COURT FOR ESSENTIALLY WHAT THEY VIEW AS FRIVOLOUS APPEALS, SO YOU MAY WANT TO TAKE A LOOK AT THOSE CASES.

MR. SHERWOOD: MY SECOND PROBLEM IS THAT WE HAVE HAD A MAJOR ACCIDENT IN MY HOUSE, AND MY WIFE WAS BUSTED UP. I HAVE HER HOME FROM THE HOSPITAL, AND MOST OF MY TIME IS SPENT TAKING CA.RE OF HER. AND IF I HAD TO RESPOND TO THIS, I WOULD LIKE A LITTLE LONGER PERIOD OF TIME.

THE COURT: 30 DAYS?

MR. SHERWOOD: 30 OR 45. 45 WOULD REALLY BE A HELP, IF I COULD HAVE 45 DAYS.

EXHIBIT C cont.

THE COURT: YOU HAVE WAITED THIS LONG, YOU ARE UNDER AN ORDER, AND IF YOU WOULD INCLUDE IN THAT AKID *MAKE* SURE NO RECORDS, BOOKS OR DOCUMENTS, ANYTHING AT ALL THAT MAY RELATE TO ANYTHING THAT WOULD BE HELPFUL IN ASSESSING TAX LIABILITY, NONE OF THAT IS TO BE DESTROYED.

MR. SHERWOOD: I DON'T OPERATE THAT WAY, YOUR HONOR.

THE COURT: I JUST WANT TO MAKE IT CLEAR. WOULD YOU ADD THAT TO THE ORDER THEN, AND SUBMIT IT, AND WE'LL PUT IT FOR 45 DAYS.

MR. DENIER: I WILL, YOUR HONOR.

THE COURT: OKAY. MR. SHERWOOD:

MR. SHERWOOD: AND YOU WILL COPY ME ON IT?

THE COURT: YOU WILL GET A COPY WITH THE COURT AFTER I HAVE SIGNED IT AND IT HAS BEEN FILED.

MR. SHERWOOD: NICE TO SEE YOU AGAIN.

THE COURT: NOW FILE YOUR RETURNS AND DON'T GET INTO TROUBLE, MR. SHERWOOD.

EXHIBIT C cont.

STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO

I, KAY C. HILL, A CERTIFIED SHORTHAND REPORTER FOR THE STATE OF CALIFORNIA, DO HEREBY CERTIFY: THAT I WAS PRESENT AT THE TIME OF THE ABOVE DESCRIBED PROCEEDINGS; THAT I TOOK DOWN IN MACHINE SHORTHAND NOTES ALL PROCEEDINGS HAD AND TESTIMONY TAKEN; THAT I THEREAFTER TRANSCRIBED SAID SHORTHAND NOTES WITH THE AID OF A COMPUTER, THE ABOVE AND FOREGOING BEING A FULL, TRUE AND CORRECT TRANSCRIPTION OF SAID NOTES, AND A FULL, TRUE AND CORRECT TRANSCRIPT OF ALL TESTIMONY TAKEN AND PROCEEDINGS HAD.

I FURTHER CERTIFY THAT I AM NOT COUNSEL FOR, NOR RELATED TO ANY PARTY TO THIS ACTION, NOR DO I HAVE ANY INTEREST IN THE ACTION.

signed KAY C. HILL, CSR 2368

DATED:

KAY C. HILL, CSR 2368

EXHIBIT D

MICHAEL J. YAMAGUCHI (California State Bar No. 84984)

United States Attorney

JAY R. WEILL (California State Bar No. 75434)

Assistant United States Attorney, Chief, Tax Division

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Attorneys for the United States of America

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA and FRANCESCA AGUILERA, Revenue Officer, Internal Revenue Service, Petitioners, v. RAYMOND B. SHERWOOD, Respondent.	**VERIFIED PETITION TO ENFORCE INTERNAL REVENUE SERVICE SUMMONSERS**

Petitioners, the **UNITED STATES OF AMERICA** and its Revenue Officer, **FRANCESCA AGUILERA,** allege and petition as follows:

EXHIBIT D cont.

1. This proceeding is brought and this Court has jurisdiction hereof under Sections 7402(b) and 7604(a) of the Internal Revenue Code (26 U.S.C. Sec. 7402 and 7604).

2. Petitioner **FRANCESCA AGUILERA** is and at all times mentioned herein was an employee and officer of the Internal Revenue Service of the United States Department of the Treasury authorized by the Secretary of the Treasury to perform the duties and take the actions described in Sections 7602 and 7603 of the Internal Revenue Code (26 U.S.C. 7602 and 7603), under Treasury Regulations 301.7602-1 and 301-7603-1 (26 C.F.R. _ 301.7602-1 and 301.7603-1).

3. Petitioner FRANCESCA AGUILERA is and at all times mentioned herein was attempting in the course of her authorized duties to collect certain unpaid federal tax liabilities of RAYMOND B. Sherwood for the years ending December 31, 1989, December 31, 1990 and December 31, 1991.

4. Petitioner FRANCESCA AGUILERA is and at all times mentioned herein was attempting in the course of her authorized duties to have respondent produce for inspection, examination and copying by petitioner certain records possessed by respondent which are relevant and material to her attempt to collect the aforementioned federal tax

liabilities of RAYMOND B. SHERWOOD, for the periods stated in paragraph 3 above.

5. Petitioner FRANCESCA AGUILERA is and all times mentioned herein was attempting in the course of her authorized duties to determine the correct federal income tax liability of RAYMOND B. SHERWOOD for the taxable year 1994.

6. Petitioner FRANCESCA AGUILERA is and all times mentioned herein was attempting in the course of her authorized duties to have respondent produce for inspection, examination and copying by petitioner certain records possessed by respondent which are relevant and material to her attempt to determine the aforementioned federal tax liability of RAYMOND B. SHERWOOD for the period stated in paragraph 5 above.

7. Respondent RAYMOND B. SHERWOOD's last known address in 1612 Merian Drive, Pleasant Hill, California, 94523 which is within the venue of this Court.

8. Petitioner FRANCESCA AGUILERA is informed and believes that said respondent is in possession and control of testimony, books, records, papers and other data covered by said petitioner's inquiries and to which petitioners do not otherwise have access, possession, or control.

EXHIBIT D cont.

9. On February 7, 1996, petitioner FRANCESCA AGUILERA served a summons on said respondent in respect to the subject matter described in paragraphs 3, 4, and 8 above, by leaving an attested copy of the summons at respondent's last known address as described in paragraph 7 above. The requirements of said summons are self-explanatory, and a true copy thereof is attached hereto as EXHIBIT and is hereby incorporated by reference as a part of this petition.

10. On February 7, 1996, petitioner FRANCESCA AGUILERA served a summons on said respondent in respect to the subject matter described in paragraphs 5, 6 and 8 above, by leaving an attested copy of the summons at respondent's last known address as described in paragraph 7 above. The requirements of said summons are self-explanatory and a true copy thereof is attached hereto as Exhibit B and is hereby incorporated by reference as part of this petition.

11. The items sought by the summons described in paragraph 9 above are relevant to and can reasonably be expected to assist in the collection of the above-mentioned federal tax liabilities of RAYMOND B. SHERWOOD for the years stated in paragraph 3 above. it was and now is essential to completion of petitioner's inquiry regarding the financial information of respondent that respondent produce the items demanded

by said summons.

12. The items sought by the summons described in paragraph 10 above are relevant to and can reasonable be expected to assist in the determination of the above-mentioned federal tax liability of RAYMOND B. SHERWOOD for the year stated in paragraph 5 above. It was and now is essential to completion of petitioner's inquiry that respondent produce the items demanded by said summons.

13. The respondent did not appear on February 21, 1996, as requested in the summonses.

WHEREFORE, having stated in full its petition against the respondents, petitioners pray for enforcement of the subject summonses as alleged and set forth above as follows:

A. That the named respondent herein be ordered to appear and show cause before this Court, if any, why he should not be compelled by this Court under 26 U.S.C. 5 7604(a) to give such testimony and to produce such items as are required in the herein above-described summonses;

B. That respondent be ordered by the Court to appear before the petitioner FRANCESCA AGUILERA, or any other designated agent, at a time and place directed by the Court and then and there give such

testimony and produce such items as is required by the summonses; and

C. That the Court grant the petitioner UNITED STATES OF AMERICA its costs in this proceeding and such other and further relief as may be necessary and proper.

MICHAEL J. YAMAGUCHI, United States Attorney

DAVID L. DENIER, Assistant United States Attorney

Tax Division

EXHIBIT D cont.

VERIFICATION

I, FRANCESCA AGUILERA, pursuant to 28 U.S.C. 1746, declare and states as follows:

I am a duly employed revenue officer in the Walnut Creek, California office of the Internal Revenue Service of the United States Treasury Department. I am one of the petitioners making the foregoing petition. I have read and know the entire contents of the foregoing petition, and all statements of fact contained in said petition are true to the best of my own personal knowledge and recollection, and as to those facts stated upon information and belief, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on (unreadable), 1996 at Walnut Creek, California.

Signed Francesca Aguilera

FRANCESCA AGUILERA

EXHIBIT D cont.

Summons

Collection Information Statement

In the matter of Raymond B. Sherwood

1612 Merian Dr.

Pleasant Hill, CA 94523

Internal Revenue District of Sacramento Periods Individual Income Tax for the Calendar Years Ended Dec. 31, 1989, Dec. 31. 1990, Dec. 31, 1991. The Commissioner of Internal Revenue To Raymond B. Sherwood at 1612 Merian Dr., Pleasant Hill, CA 94523. You are hereby summoned and required to appear before Mrs. F. Aguilera an Internal Revenue Service (IRS)officer, to give testimony and to bring for examination the following information related to the collection of the tax liability of the person identified above for the periods shown:

All documents and records you possess or control regarding assets, liabilities, or accounts held in the taxpayer's name or for the taxpayer's benefit which the taxpayer wholly or partially owns, or in which the taxpayer has a security interest. These records and documents include but are not limited to: all bank statements, checkbooks, canceled checks,

EXHIBIT D cont.

savings accounts passbooks, records or certificates of deposit for the periods shown:

All documents and records you possess or control regarding assets, liabilities, or accounts held in taxpayer's name or for the taxpayer's benefit which the taxpayer wholly or partially owns, or in which the taxpayer has a security interest. These records and documents include but are not limited to : all bank statements, checkbooks, canceled checks, savings account passbooks,, records, or certificates of deposit for the period From Jan 1, 1995 to Jan 15, 2006. Also include all current vehicle registration certificates, deeds or contracts regarding real property, stocks and bonds, accounts, notes, and judgments receivable, and all current life or health insurance policies.

IRS will use this information to prepare a Collection Information Statement. We have attached a blank statement to guide you in producing the necessary documents and records.

Place and time for appearance: At 185 Lennon Lane, Ste 200, Walnut Creek, CA 94598 On the 21st day of February, 1996 at 9:00 o'clock A.M.

Issued under authority of the Internal Revenue Code this 7th day of February 1996. Signed F. Aguilera Revenue Officer.

EXHIBIT D cont.

Summons

Income Tax Return

In the matter of Raymond B. Sherwood

1612 Merian Dr.

Pleasant Hill, CA 94523

Internal Revenue District of Sacramento Periods Individual Income Tax for the Calendar Years Ended Dec. 31, 1994. The Commissioner of Internal Revenue To Raymond B. Sherwood at 1612 Merian Dr., Pleasant Hill, CA 94523. You are hereby summoned and required to appear before Mrs. F. Aguilera an Internal Revenue Service (IRS) officer, to give testimony and to bring for examination the following information related to the collection of the tax liability of the person identified above for the periods shown:

All documents and records you possess or control regarding income you received for the years 1994. These records and documents include, but are not limited to: Forms W-2 (Wage and Tax Statement), Forms 1099 for interest and dividend income, employee earnings statements, and records of deposit with banks or other financial institutions. Also include all other books, records, documents, and receipts for income from, but not limited

EXHIBIT D cont.

to the following sources: wages, salaries, tips, fees, commissions, interest, rents, royalties, alimony, state, or local tax refunds, annuities, life insurance policies, endowment contracts, pensions, estates, trusts, discharge of indebtedness, distributive shares of partnership income, business income, gains from dealings in property, and any other compensation for services (including receipt of property other than money). Including all documents and records about any income you assigned to any other person or enity. IRS will use this information to prepare a federal income tax return for the following year(s) when you don't file a return. 1994. We have attached a blank return to guide you in producing the necessary documents and records. Business address and telephone number of Internal Revenue Service officer named above. 185 Lennon Lane, Ste 200, Walnut Creek, CA 94598. Place and time for appearance: At 185 Lennon Lane, Ste. 200, Walnut Creek, CA 94598 On the 21st day of February, 1996 at 9:00 A.M.

Issued under the authority of the Internal Revenue Code this 9th day of February , 1996. Signed F. Aguilera, Revenue Officer.

EXHIBIT E

TITLES OF UNITED STATES CODE

*1. General Provisions.

2. The Congress

*3. The President.

*4. Flag and Seal, Seat of Government and the States.

*5. Government Organization and Employees; and Appendix.

+6. (Surety Bonds).

7. Agriculture.

8. Aliens and Nationality.

*9. Arbitration.

*10. Armed Forces; and Appendix.

*11. Bankruptcy; and Appendix.

12. Banks and Banking.

*13. Census.

*14. Coast Guard.

15. Commerce and Trade.

16. Conservation.

*17. Copyrights.

*18. Crimes and Criminal Procedure; and Appendix.

19. Customs Duties.

20.Education.

21. Food and Drugs.

22. Foreign Relations and Intercourse.

EXHIBIT E cont.

*23. Highways.

24. Hospitals and Asylums.

25. Indians.

26. Internal Revenue Code; and Appendix.

27. Intoxicating Liquors.

*28. Judiciary and Judicial Procedure; and Appendix.

29. Labor.

30. Mineral Lands and Mining.

*31. Money and Finance.

*32. National Guard.

33. Navigation and Navigable Waters.

34. (Navy).

*35. Patents.

36. Patriotic Societies and Observances.

*37. Pay and Allowances of the Uniformed Services.

*38. Veterans' Benefits; and Appendix.

*39. Postal; Service.

40. Public Buildings, Property, and Works; and Appendix.

41. Public Contracts.

42. The Public Health and Welfare.

43. Public Lands.

*44. Public Printing and Documents.

45. Railroads.

EXHIBIT E cont.

*46. Shipping: and Appendix.

47. Telegraphs, Telephones, and Radiotelegraphs.

48. Territories and Insular Possessions.

*49. Transportation.

50. War and National Defense; and Appendix.

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*This title has been enacted as law. However, any appendix to this title has not been enacted as law.

+This title was enacted as law and has been repealed by the enactment of Title 31.

[This title has been eliminated by the enactment of Title 10.

Note: The lack of an asterisk (*) indicates title 26 has not been enacted into positive law.

(See Page III)

EXHIBIT E cont.

PREFACE 1994 EDITION

This twelfth edition of the United States Code, prepared and published pursuant to section 285b of Title 2 of the Code, is a consolidation and codification of all the general and permanent laws of the United States in force on January 4, 1995. By statutory authority, this edition may be cited "U.S.C. 1994 ed.". Previous editions were published in 1926, 1934, 1940, 1946, 1952, 1958, 1964, 1970, 1976, 1982 and 1988.

Because many of the general and permanent laws that are required to be incorporated in the code are inconsistent, redundant, and obsolete, the Office of the Law Revision Counsel of the House of Representatives has been engaged in a continuing, comprehensive project authorized by law to revise and codify, for enactment into positive law, each title of the Code. When this project is completed, all the titles of the Code will be legal evidence of the general and permanent laws and recourse to the numerous volumes of the United States Statutes at Large for this purpose will no longer be necessary, Titles 1, 3, 4, 5, 9, 10, 11, 13, 14, 17, 18, 23, 28, 31, 32, 35, 37, 39, 44, 46, and 49 have been revised, codified, and enacted into positive law and the text thereof is legal evidence of the laws therein contained. He matter contained in the other titles of the Code is prima facie evidence of the laws.

EXHIBIT E cont.

The title and chapter structure of the 1988 edition, together with Supplement V thereto, has been substantially preserved, the only changes made having been necessitated by the enactment of legislation since 1988.

This edition was prepared and published under the supervision of Edward F. Willett,Jr, Law Revision Counsel of the House of Representatives, with the assistance of the West Publishing Company of St. Paul, Minnesota, which assisted in preparing all prior edition and supplements of the Code. Grateful acknowledgment is made to the staffs of the Office of the Law Revision Counsel, the West Publishing Company, and the Government Printing Office for their untiring efforts and cooperation.

Newt Gingrich
Speaker of the House of Representatives
Washington, D.C. January 4, 1995 (See Page vii)

EXHIBIT E cont.

PREFACE – 1988 EDITION

This eleventh edition of the United States Code, prepared and published pursuant to section 285b of Title 2 of the Code, is a consolidation and codification of all the general and permanent laws of the United States in force on January 3, 1989. By statutory authority, this edition may be cited "U.S.C. 1988 ed.". Previous editions were published in 1926, 1934, 1940, 1946, 1952, 1958, 1964, 1970, 1976, and 1982.

Because many of the general and permanent laws that are required to be incorporated in the Code are inconsistent, redundant, and obsolete, the Office of the Law Revision Counsel of the House of Representatives has been engaged in a continuing, comprehensive project authorized by law to revise and codify, for enactment into positive law. each title of the Code. When this project is completed, all the titles of the Code will be legal evidence of the general and permanent laws and recourse to the numerous volumes of the United States Statutes at Large for this purpose will no longer be necessary. Titles 1. 3, 4, 5, 9 10, 11, 13, 14, 17, 18, 23, 28, 31, 32, 35, 37, 38, 39, 44, 46. and 49 have been revised, codified, and enacted into positive law and the text thereof is legal evidence of the laws therein contained. The matter contained in the other titles of the Code is prima facie evidence of the laws.

EXHIBIT E cont.

The title and chapter structure of the 1982 edition, together with Supplement V thereto, has been substantially preserved, the only changes made having been necessitated by the enactment of legislation since 1982.

This edition was prepared and published under the supervision of Edward F. Willett, Jr., Law Revision Counsel of the House of Representatives, with the assistance of the West Publishing Company of St. Paul, Minnesota, which assisted in preparing all prior editions and supplements of the Code. Grateful acknowledgment is made to the staffs of the Office of the Law Revision Counsel, the West Publishing Company, and the Government Printing Office for their untiring efforts to make this edition as nearly perfect as possible.

Signed THOMAS FOLEY
Speaker of the House of Representatives

WASHINGTON, D.C. June 30, 1989
(see: page vii Preface Page United States Code)

EXHIBIT E cont.

PREFACE-1982 EDITION

This tenth edition of the United States Code, prepared and published pursuant to section 285b of Title 2 of the Code, is a consolidation and codification of all the general and permanent laws of the United States in force on January 14. *1983*. By statutory authority, this edition may be cited "U.S.C. 1982 ed.". Previous editions were published in 1926, 1934, 1940, 1946, 1952. 1958, 1964, 1970, and 1976.

Because many of the general and permanent laws that are required to be incorporated in the Code are inconsistent, redundant, and obsolete, the Office of the Law Revision Counsel of the House of Representatives has been engaged in a continuing. comprehensive project authorized by law to revise and codify, for enactment into positive law, each title of the Code. When this project is completed, all the titles of the Code will be legal evidence of the general and permanent laws and recourse to the numerous volumes of the United States Statutes at Large for this purpose will no longer be necessary. Titles 1. 3. 4. 5. 9, 10, 11, 13, 14, 17, 18, 23, 28. 31. 32, 35, 37, 38, 39, 44. and 49 have been revised, codified, and enacted into positive law and the text thereof Is legal evidence of the laws therein contained. The matter contained In the other titles of the Code Ls prima facie evidence of the laws.

The title and chapter structure of the 1978 edition, together with Supplement V

thereto, has been substantially preserved, the only changes made having been necessitated by the enactment of legislation since 1976.

This edition was prepared and published under the supervision of Edward P. Willett, Jr., Law Revision Counsel of the House of Representatives. With the assistance of the West Publishing Company of St. Paul, Minnesota, which assisted in preparing all prior editions and supplements of the Code. Grateful acknowledgment is made to the staffs of the Office of the Law Revision Counsel, the West Publishing Company, and the Government Printing Office for their untiring efforts to make this edition as nearly perfect as possible.

Signed THOMAS P. O'NEILL

Speaker of the House of Representatives

Washington, D.C., January 14, 1983

EXHIBIT F

TITLE 1 SECTION 204

Codes and Supplements as evidence of the Laws of United States and District of Columbia; citation of Codes and Supplements

In all courts, tribunals, and public offices of the United States, at home or abroad, of the District of Columbia, and of each State, Territory, or insular possession of the United States—

(a) United States Code. – The matter set forth in the edition of the Code of Laws of the United States current at any time shall, together with the then current supplement, if any, establish prima facie the laws of the United States, general and permanent in their nature, in force on the day preceding the commencement of the session following the last session the legislation of which is included: Provided, however, That whenever titles of such Code shall have been enacted into positive law the text thereof shall be legal evidence of the laws therein contained, in all the courts of the United States, the several States, and the Territories and insular possessions of the United States.

EXHIBIT F cont.

United States Code Titles As Positive Law

The following titles of the United States Code have been enacted into positive law by the acts enumerated below:

Title 1, General Provisions.

Title 3, The President.

Title 4, Flag and Seal, Seat od Government, and the States.

Title 5, Government Organization and Employees.

Title 6, Surety Bonds.

Title 9, Arbitration.

Title 10, Armed Forces.

Title 11, Bankruptcy.

Title 13, Census.

Title 14, Coast Guard.

Title 17, Copyrights.

Title 18, Crimes and Criminal Procedure.

Title 23, Highways.

Title 28, Judiciary and Judiciary Procedure.

Title 31, Money and Finance.

Title 32, National Guard.

Title 35, Patents.

Title 37, Pay and Allowances of the Uniformed Services.

EXHIBIT F cont.

Title 38, Veterans' Benefits.

Title 39, Postal Service.

Title 44, Public Printing and Documents.

Title 46, Shipping.

Title 49, Transportation.

NOTE: Title 26 is not listed.

EXHIBIT G

Title 31 USC Money and Finance

CHAPTER 3 – DEPARTMENT OF THE TREASURY

SUBCHAPTER 1 – ORGANIZATION

Sec.

301 Department of the Treasury

302 Treasury of the United States

303 Bureau of Engraving and Printing

304 Bureau of the Mint

305 Federal Financing Bank

306 Fiscal Service

307 Office of the Comptroller of the Currency

308 United States Customs Service

SUBCHAPTER 1 – ORGANIZATION

Sec. 301. Department of the Treasury

(a) The Department of the Treasury is an executive department of the United States Government at the Seat of Government.

(b) The head of the Department is the Secretary of the Treasury. The Secretary is appointed by the President, by and with the advice and consent of the Senate.

EXHIBIT G cont.

Title 5 – Government Organization and Employees

PART 1 – THE AGENCIES GENERALLY

Sections 101 to 552 appear in this Volume

Chapter	Section
1. Organization	101
3. Powers	301
5. Administration Procedure	501
6. The Analysis of Regulatory Functions	601
7. Judicial Review	701
9. Executive Reorganization	901

CHAPTER 3 – POWERS

Sec.

301 Departmental regulations

302 Delegation of authority

Section 301 Departmental regulations

The head of an Executive department or military department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property. This section does not authorize withholding information from the public or limiting the availability of records to the public.

EXHIBIT G cont.

Section 302. Delegation of authority

(a) For the purpose of this section, "agency" has the meaning given it by section 5721 of this title.

Section 5721. Definitions

For the purpose of this subchapter –

(1) "agency" means

(A) an Executive agency.

TITLE 4 – FLAG AND SEAL, SEAT OF GOVERNMENT

CHAPTER 3 – SEAT OF GOVERNMENT

Sec.
71 Permanent seat of Government

71 Public offices; at seat of Government

Section 71. Permanent seat of Government

All that part of the territory of the United States included within the present limits of the District of Columbia shall be the permanent seat of government of the United States.

Section 72. Public offices; at seat of Government

All offices attached to the seat of government shall be exercised in the District of Columbia, and not elsewhere, except as otherwise expressly provided by law.

EXHIBIT G cont.

TITLE 5 – GOVERNMENT ORGANIZATION AND EMPLOYEES

PART 1 – THE AGENCIES GENERALLY

Sections 101 to 552 appear in this volume

Chapter		Section
1.	Organization	101
3.	Powers	301
5.	Administration Procedures	501

CHAPTER 1 – ORGANIZATION

Section
101. Executive departments.

102. Military departments.

103. Government corporation.

104. Executive agency.

Sections 101. Executive departments.

The Executive departments are:

The Department of State.

The Department of the Treasury.

Section 105. Executive agency

For the purpose of this title, "Executive agency" means an Executive department, a Government corporation, and an independent establishment.

EXHIBIT G cont.

TITLE 44 PUBLIC PRINTING AND DOCUMENTS

Section 1501. Definitions

"Federal agency" or "agency" means the President of the United States, or an executive department, independent board, establishment, bureau, agency, institution, commission, or separate office of the administrative branch of the Government of the United States but not the legislative or Judicial branches of the Government;

"person" means an individual, partnership, association, or corporation; and....

TITLE 26 – INTERNAL REVENUE CODE

Section 7801. Authority of Department of the Treasury

(a) Powers and duties of the Secretary

Except as otherwise expressly provided by law, the administration and enforcement of this title shall be performed by or under the supervision of the Secretary of the Treasury.

Section 7805. Rules and Regulations

(a) Authorization

Except where such authority is expressly given by this title to any person other than an officer or employee of the Treasury Department, the Secretary shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of

any alteration of law in relation to internal revenue.

Section 7806. Construction of Title

(a) Cross references

The cross references in this title to other portions of the ttitle, or other provisions of law, where the word "see" is used, are made only for convenience, and shall be given no legal effect.

(b) Arrangement and classification

No inference, implication, or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion of this title, nor shall any table of contents, table of cross references, or similar outline, analysis, or descriptive matter relating to the contents of this title be given any legal effect. The preceding sentence also applies to the sidenotes and ancillary tables contained in the various prints of this Act before its enactment into law.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. C- 97- 2796 CW

ORDER SETTING CASE MANAGEMENT CONFERENCE

The above matter having been assigned to Judge Wilken,

IT IS HEREBY ORDERED, pursuant to Rule 16, Federal Rules of Civil Procedure, and Civil Local Rule 16, that a case management conference will be held before Judge Wilken, on Friday, 10/31/97 at 1:30 p.m., in Courtroom 2, 4th Floor, 1301 Clay Street, Oakland, California.

Lead trial counsel shall meet and confer not less than thirty (30) days in advance of the conference and shall file a joint case management statement in the form contained in the Civil Local Rules (copy attached) not less than ten (10) days in advance of the conference.

If the conference is inconveniently scheduled, it may be-rescheduled by stipulation and order to another date or time convenient to the Court's calendar.

At the conclusion of the conference, an order will be entered setting dates either for a further case management conference, or for close of discovery, pretrial conference, and trial. Other orders regulating and controlling future proceedings may be entered.

Plaintiff *(s)* shall serve copies of this Order at once on all parties to this

action, and on any parties , subsequently joined, in accordance with Fed. R. Civ. P. 4 and 5. Following service, Plaintiff (s) shall file a certificate of service with the Clerk of this Court.

FAILURE TO COMPLY WITH THIS ORDER may be deemed sufficient grounds for dismissal of this cause, default or other appropriate sanctions. See Fed. R. Civ. P. 16 (f)

See attached for standard procedures.

IT IS SO ORDERED.

Signed CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

Raymond Bailey, Sherwood, SUI JURIS
1612 MERIAN DR7VE
PLEASANT HILL, CALIFORNIA REPUBLIC 94523
(510) 827-2604 IN PROPRIA PERSONA

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

Raymond Bailey, Sherwood
SOVEREIGN CITIZEN OF LAW

Case No. C-97-2796 CW

Plaintiff,

PLAINTIFF'S MOTION FOR JUDGMENT BY DEFAULT BY THE COURT

v.

Marilyn Hall Patel

Pursuant to F.R.C.P. 55(b)

Defendant.

_____/

MOTION

Comes now Raymond Bailey, Sherwood plaintiff in the above-entitled cause and respectfully moves the court to issue a **JUDGMENT BY DEFAULT BY THE COURT** against the defendant in this action for the reasons listed below.

STATEMENT

Whereas defendant failed to respond to the plaintiff's complaint in a timely manner, plaintiff now motions this court for default judgment.

FACTS

Plaintiff filed the complaint on July 30, 1997 and the complaint was duly served on August 1, 1997 allowing 60 days for response from August 2, 1997 until October 1, 1997.

The defendant failed to timely respond to plaintiff's complaint by the due date of October 1, 1997.

CLAIM FOR RELIEF

Wherefore, plaintiffs moves this court to make and enter a judgment in favor of plaintiff and against the defendant, awarding the relief sought of one million dollars, his cost of suit and expenses, including reasonable attorney's fees and such other and further relief to which he is justly entitled.

Dated: October 3, 1997

signed RAYMOND B. SHERWOOD

Honorable Claudia Wilken
United States District Judge
Courtroom 2, 4th Floor
1301 Clay Street
Oakland, California

Re: C-97-2796 CW

Dear Judge Wilken:

Enclosed with this letter is my (Plaintiff's) copy of the Joint Case Management Statement and Proposed Order to comply with your Order Setting Case Management Conference (copy enclosed). The Defendant has failed to respond to the Complaint which has prevented this party from issuing a JOINT Case Management Statement.

A copy of the plaintiff's Joint Case Management Statement, your Order Setting Case Management Conference, and this letter is being sent to the defendant.

Sincerely,_

Signed———————
Raymond B. Sherwood
1612 Merian Dr.
Pleasant Hill, Calif. 94523

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Raymond B. Sherwood, Plaintiff(s)

V.

Marilyn Hall Patel, Defendant'(s)

_____/

CASE NO. C-97-2796 CW

JOINT CASE MANAGEMENT STATEMENT AND PROPOSED ORDER

The parties to the above – entitled action jointly submit this Case Management Statement and Proposed Order and request the Court to adopt it as its Case Management Order in this case.

DESCRIPTION OF THE CASE

1. A brief description of the events underlying the action:

Ruling without jurisdiction.

2. The principal factual issues which the parties dispute:

Jurisdiction over plaintiff.

3. The principal legal issues which the parties dispute:

Lack of jurisdiction.

4. The other factual issues (e.g. service of process, personal jurisdiction, subject matter jurisdiction or venue) which remain unresolved for the reason stated below and how the parties propose to resolve those issues:

Lack of subject matter jurisdiction and personal jurisdiction.

5. The parties which have not been served and the reasons:

All parties served.

6. The additional parties which the below specified parties intend to join and the intended time frame for such joinder.

None anticipated

ALTERNATE DISPUTE RESOLUTION

7. The following parties consent to assignment of this case to a United States Magistrate Judge for (court or Jury) trial:

8. The parties have already been assigned (or the parties have agreed) to the following court ADR process (e.g. Nonbinding Arbitration, Early Neutral Evaluation, Mediation, Early Settlement with a Magistrate Judge) (State the expected or scheduled date for the ADR session):

9. The ADR process to which the parties jointly request (or a party separtely requests) referral:

DISCLOSURES

10. The parties certify that they have made the following disdlosures (list disclosures of persons, documents, damage, computations and insurance agreements): **None.**

11. The parties agree to the following discovery plan (Describe the plan e.g. any limitations on the number, duration or subject matter for various kinds of discovery: discovery from express: deadlines for completing discovery)

No agreement due to defendant's failure to respond to complaint.

TRIAL SCHEDULE

12. The parties request a trial date as follows:

Open court date.

13. The parties expect that the trial will last for the following number of days:

One day.

SIGNATURE AND CERTIFICATION BY PARTIES AND LEAD TRIAL COUNSEL

Pursuant to Civil L.R. 16-12. Each of the undersigned certifies that he or she has read the brochure entitled "Dispute Resolution Procedures in the Northern District of California," discussed the available dispute resolution options provided by the court and private entities and has considered whether this case might benefit from any of the available dispute resolutions options.

Dated ; October 6, 1997 signed RAYMOND B. SHERWOOD

Dated : _____ signed _____

CASE MANAGEMENT ORDER

The Case Management Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the Case and the parties are ordered to comply with this Order. In addition the Court orders: (The Court may wish to make additional orders, such as:

a.
b. Referral of the parties to court or private ADR process;
c. Schedule a further Case Management Conference;
d. Schedule the time and content of supplemental disclosures;

d. Specially set motions;
e. Impose limitations on disclosure or discovery.
f. Set time for disclosure of identity, background and opinions of experts;
g. Set deadlines for completing fact and expert discovery;
h. Set time for parties to meet and confer regarding pretrial submissions.
i. ;Set deadline for hearing motions directed to the merits of the case.
j. Set deadline for submission of pretrial material
k. Set date and time foe pretrial conference.
l. Set a date and time for trial.

Dated:———

_____
United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

RAYMOND B. SHERWOOD

Plaintiff,

v.

MARILYNHALL PATEL

Defendant.

_____/

No. C-97-2796 CW

ORDER CONTINUIING CASE MANAGEMENT CONFERENCE

On July 30, 1997, Plaintiff filed the above-captioned action.. A review of the file reflects that Plaintiff has failed to serve the summons and complaint in accordance with Rule 4(i) of the Rules of Civil Procedure. Accordingly,

IT IS HEREBY ORDERED that the Case Management Conference is continued to January 9, 1998, at 1:30 p.m. Plaintiff shall comply Rule 4(i) within the time limit for service as set forth in Rule 4(m). Failure to do so may result in dismissal of this action-

Dated: OCT 31 "

signed CLAUDIA WILKEN
United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

RAYMOND BAILEY SHERWOOD,

Plaintiff,

v.

MARILYN HALL PATEL,

Defendant.

/

No. C 97-02796 CW

ORDER DENYING PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT

Plaintiff moves for judgment by default under Rule 55(b) of the Federal Rules of Civil Procedure. Defendant has filed no opposition. This matter will be decided on the papers that have been submitted. Having considered all of the papers filed by the parties, the Court denies the motion.

BACKGROUND

On July 30, 1997, Plaintiff Raymond Bailey Sherwood, proceeding pro se, filed a complaint against Hon. Marilyn Hall Patel, District Judge of the United States District Court for the Northern District of California. He alleges that Judge Patel acted outside the scope of her authority as a federal judge when she issued Supplemental order supporting an Order to Show Cause Re: Enforcement of Internal Revenue Service Summons. Mr. Sherwood alleges that the order, which was allegedly issued in want of personal and subject matter jurisdiction, forced Mr. Sherwood to appear before Revenue officer Francesca

Aguilera and disclose privileged personal information against his will. He alleges further that Judge Patel conducted a hearing on July 26, 1996, at which she acted with bias towards him.

Mr. Sherwood asserts three claims for relief against Judge Patel: violations of his constitutional rights, lack of subject matter jurisdiction, and abuse of legal process. He seeks one million dollars in damages. Judge Patel has not responded to the complaint.

On October 3, 1997, Mr. Sherwood filed a motion for entry of default under Rule 55(a) of the Federal Rules of Civil Procedure. That same day, he filed a separate motion for default judgment under Rule 55(b). Judge Patel has not responded to either motion.

DISCUSSION

I. Legal Standard

Three related concepts are involved in each case involving a default: default, entry of default, and default judgment. it is .important to distinguish between these concepts. As the Fifth Circuit pointed out in New York Life Ins, Co. v. Brown, 84 F.3d 137, 141 (5th Cir. 1996), a default occurs when a defendant has failed to respond to the complaint within the time required. An entry of default is what the clerk of the court enters when a plaintiff establishes the defendant's default by affidavit or otherwise. Id, After a defendant's default has been entered, the plaintiff may apply to the court or the clerk of the court for a default

judgment, which is a judgment based on the default. Id.

A defendant's default does not automatically entitle a plaintiff to a default judgment. Granting or denying a motion for default judgment is within the district court's sound discretion. Draper v. Coomba, 792 F.2d 915, 924 (9th Cir. 1986). A court may refuse to enter default judgment where the court determines no justifiable claim has been alleged, or the default judgment is otherwise inappropriate. Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

II. Default judgment is inappropriate here

Default judgment is inappropriate here for three reasons.

First, according to the docket, although Mr. Sherwood has requested the entry of default, default has not been entered against Judge Patel. Under Rule 55 of the Federal Rules of Civil Procedure, a plaintiff must obtain an entry of default before applying for judgment based on such default. See New York Life-, 84 F.3d at 141.

Second, Rule 49(i) of the Federal Rules of Civil Procedure provides that, in order to effect service upon an officer of the United States, a plaintiff must do three things: (1) deliver a copy of the summons and the complaint to the United States Attorney for the district in which the action is brought; (2) send a copy of the summons and the complaint to the Attorney General of the

United States; and (3) send a copy of the summons and complaint to the officer of the United States. Because Mr. Sherwood has failed to serve the United States Attorney or the Attorney General, he has failed to effect proper service upon Defendant. By Order of October 31, 1997, the Court continued the Case Management Conference in this case to January 9, 1998 because Mr. Sherwood had failed to serve the summons and complaint in accordance with Rule 4(i) of the Federal Rules of Civil Procedure.

Third, even if Mr. Sherwood were to obtain an entry of default against Judge Patel, default judgment would be inappropriate because she is protected by absolute judicial immunity. In New Alaska Development Corp. v. Guetschow, 869 F.2d 1298 (9th Cir. 1989), the Ninth Circuit held that absolute judicial immunity protects a judge functioning in a judicial capacity. In Moore v. Brewster, 96 F.3d 1240, 1243 (9th Cir. 1996) , cert, denied, 117 S. Ct. 963 (1997), the Ninth Circuit held that a judge enjoys absolute judicial immunity from civil actions for damages as well as actions for declaratory, injunctive and other equitable relief. Absolute judicial immunity applies even if the plaintiff alleges that the judge committed legal errors. The Moore court held further that judicial immunity applies, however erroneous the act may have been, and however injurious in its consequences it may have proved to the plaintiff. at 1244 (quoting Cleavinger v. Saxner, 474 U.S. 193, 199-200

(1985). Even grave procedural errors or acts in excess of judicial authority do not deprive a judge of absolute judicial immunity. Id. A judge loses absolute immunity only when he or she acts in the clear absence of all jurisdiction or performs an act that is not judicial in nature. Schucker v. Rockwood, 846 F.2d 1202, 1204 (9th Cir.), cert. denied, 488 U.S., 995 (1988).

Here, Judge Patel is entitled to absolute judicial immunity. Her acts of issuing the order to show cause regarding the enforcement of the IRS summons and conducting the hearing regarding this summons qualify as judicial acts well within her jurisdiction. Title 26 U.S.C. § 7402(b) provides the United States district courts with subject matter jurisdiction over the enforcement of a summons under internal revenue laws. Furthermore, the district court had personal jurisdiction over Mr. Sherwood because of his residence in the Northern District of California. Rule 4(k)(1)(A) Fed. R. Civ. Proc. Mr. Sherwood's assertions to the contrary are without merit.

Under Schucker and Moore, therefore, Judge Patel is immune from Mr. Sherwood's civil suit for damages based on these judicial actions.

Because Mr. Sherwood has failed to state a justifiable claim against Judge Patel, the Court denies his motion for default judgment. See Eitel, 782 F.2d at 1471-72 (9th Cir. 1986).

CONCLUSION

For the foregoing reasons, Plaintiff's motion is denied.

Dated::Nov 03 1997

signed CLAUDIA WILKEN
United States District Judge

Raymond Bailey, Sherwood, SUI JURIS
1612 Merian Dr.
Pleasant Hill, California 94523
(510) 827-2604
IN PROPRIA PERSONA

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF CALIFORNIA

Raymond Bailey, Sherwood a proper and necessary Party Plaintiff, v. Marilyn Hall Patel, in Her private person Defendant. ———————————/	File Number. C-97-02796 CW PLAINTIFF'S MOTION TO VACATE ORDER CONTINUING CASE MANAGEMENT CONFERENCE Date: December 12, 1997 Time: 10:30 a.m.

MOTION

Comes now Raymond Bailey Sherwood, plaintiff in the above entitled cause and respectfully moves the court to VACATE ORDER CONTINUING CASE MANAGEMENT CONFERENCE for the reasons listed below.

STATEMENT

Plaintiff filed the above-captioned action on July 30, 1997and served the defendant on August 1, 1997 as an "individual-defendant" under Rule 4(e) (2) of the Federal Rules of Civil Procedure. The defendant has failed to respond to the complaint.

DISCUSSION

I

WAS SERVICE PROPER

Service was proper under Rule 4 (e) (2).). Rule 4(e) Service Upon Individuals Within a Judicial District of the United States. (2)...or by delivering a copy of the summons and the complaint to an agent authorized by appointment or by law to receive service of process.

The Complaint is quite clear as being against Marilyn Hall Patel, as an individual. The Proof of Service on line 4a indicates "as an individual descendant" and also indicates -t.hat Lorlig Muriyama was authorized to accept service for Marilyn Hall Patel, which indicates Service was proper under Rule 4(e) (2).

Service was timely as recognized by the filing of the Complaint on July 30, 1997 and Service completed on August 1, 1997 as authenticated by the Proof of Service.

Service under Rule 4(i) is NOT APPLICABLE. Rule 4(i) Service Upon the United States, and Its Agencies, Corporations, or Officers. The United States, and Its Agencies, Corporations, or Officers are not a party in this action, therefore Service under Rule 4 (i) is not applicable.

II

PLAINTIFF'S OBJECTIONS

Plaintiff OBJECTS to this Court acting as an Attorney from the Bench. It is the responsibility of the defendant to raise any issues of dispute with the Complaint or with Service of the Summons and any action on behalf of the defendant is an abuse of discretion by the Court, particularly in view of the absence or a responsive pleading by the defendant.

CONCLUSION

Plaintiff has properly served the defendant in this action and within the allotted time period. The fact that the defendant has failed to supply any factual basis for a meritorious defense either by motion or affidavit, leaves the Court no ethical or legal alternative but to presume the plaintiff's allegations are true.

> Where the complaint is verified, and the defendant fails to answer, plaintiff is entitled to judgment on the complaint, witriout proof of the facts. *Tuolumne Redemption Co. v. Patterson, 18 Cal 415; Lick* v Stockdale, 18 Cal 219.
>
> Defendant's default in failing to answer complaint was willful indifference to court's authority, permitting district court to refuse to set aside entry of default on good cause grounds; there was no evidence demonstrating that defendant did not have actual knowledge of the complaint, summons provided that failure to answer within 20 days would result in an entry of a default judgment, and defendant never filed an answer or otherwise pled to complaint: Hunt *v. Kling Motor Co., D.C.-. Kan. 1994, 841 F. Supp. 1098.*
>
> Although law generally favors hearing on merits, plaintiff as entitled to default— judgment when defendant fails to answer, demur, or give

notice of certain other motions. *Ely v. Gray (1990) .224 Cal. App. 3rd 1257, 1260, 274 Cal , Rptr. 536.*

Relief from a default judgment must be sought under Rule 60(b) and there is no evidence that defendant requested such relief.

Respectfully submitted on November 12, 1997

Signed RAYMOND B. SHERWOOD

1612 Merian Dr.
Pleasant Hill. Calif. 94523

A-21 cont.